

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) constitutes an agreement between the United States Department of Homeland Security (DHS) and the State of Alabama to create an initiative pursuant to which the DHS Bureau of Immigration and Customs Enforcement (ICE) authorizes nominated, trained and certified troopers of the Alabama Department of Public Safety (DPS) to perform certain immigration enforcement functions as specified herein. The DPS represents the State of Alabama in the implementation and administration of this MOU. It is the intent of the parties that this initiative result in enhanced capacity to deal with immigration violators in Alabama.

I. PURPOSE

The purpose of this MOU is to set forth the terms and conditions for this initiative to authorize selected Alabama state troopers (“participating state troopers”) to perform certain functions of an ICE officer, and how those participating state troopers will be nominated, trained, authorized, and supervised in conducting specified functions of an immigration officer.

Nothing herein shall otherwise limit the jurisdiction and powers normally possessed by a participating trooper as a member of the DPS. Nothing herein shall otherwise limit the ability of participating state troopers to provide, as provided by or allowed by law, such assistance in any enforcement action unrelated to immigration enforcement as may be lawfully requested by a law enforcement officer having jurisdiction over any such incident, crime or matter under consideration. The exercise of immigration enforcement authority, however, by participating state troopers shall occur only as provided in this MOU.

II. AUTHORITY

Section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g), as amended by the Homeland Security Act, Public Law 107-296, permits the Secretary of Homeland Security, acting through the Under Secretary for Border and Transportation Security, to enter into written agreements with a State or any political subdivision of a State so that qualified officers can perform certain immigration enforcement functions. This MOU constitutes such a written agreement.

<p>unlawfully enter the U.S., 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).</p> <ul style="list-style-type: none"> ✓• The power 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). • 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). • Detainer authority. 8 CFR 287.7. • Transportation of aliens. INA § 236. 	<ul style="list-style-type: none"> • Complete required arrest reports and forms; prepare Notice to Appear for ICE supervisory signature • Prepare immigration detainers • Prepare affidavits and take sworn statements • Transport aliens under arrest • Assist in pre-arrest and post-arrest case processing of individuals taken into custody by ICE, including: fingerprinting, photographing, interviewing, etc. • Detain arrested aliens in ICE- approved detention facilities
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In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating state troopers in exercising these authorities shall be DHS policies and procedures. However, when engaged in immigration enforcement activities, no participating trooper will be expected or required to violate or otherwise fail to maintain DPS standards of conduct, or be required to fail to abide by restrictions or limitations as may otherwise be imposed by law, or DPS rules, standards, or policies.

V. NOMINATION OF TROOPERS

The Director of DPS will nominate to ICE candidates for initial training and certification under this MOU. For each candidate nominated, ICE may request any information necessary for a background check and evaluation for suitability to participate in the initiative. All candidates must be United States citizens. All candidates will have at least three years experience as a sworn law enforcement officer. 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

III. POLICY

This MOU sets forth the scope of the ICE officer functions that DHS is authorizing the participating state troopers to perform. It sets forth with specificity the duration of the authority conveyed and the specific lines of authority, including the requirement that participating state troopers be subject to ICE supervision while performing immigration-related duties pursuant to this MOU.

Before participating state troopers will be authorized to perform ICE officer functions, the participating state troopers 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 initiative.

As part of its commitment to the communities it serves, DPS will communicate the intent, focus, and purpose of this initiative to organizations and groups expressing an interest in the law enforcement activities to be engaged in under this MOU. This MOU also describes the complaint procedures available to members of the public regarding actions taken by troopers pursuant to this agreement.

Only participating state troopers who are selected, trained, authorized and supervised as set out herein have authority pursuant to this MOU to conduct the ICE officer functions enumerated in this MOU.

The ICE and DPS points of contact for purposes of implementation 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 the participating state officers are indicated below with their associated authorities:

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 to arrest without warrant any alien entering or attempting to 	<ul style="list-style-type: none"> • Interrogate in order to determine probable cause for an immigration arrest • ✓ Arrest without warrant for civil and criminal immigration violations – must notify ICE of any arrests within twenty-four (24) hours

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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 troopers 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.

VI. TRAINING

ICE will provide appropriate training of nominated troopers tailored to the designated ICE functions and types of cases typically encountered by DPS troopers at a mutually designated site in Alabama, utilizing ICE-designed curriculum and competency testing. Training will include presentations on this initiative, elements of the MOU, scope of officer authority, cross-cultural issues, use of force policy, civil rights law, public outreach and complaint procedures, liability and other relevant issues. ICE will provide all training materials. DPS is responsible for the salaries and benefits, including overtime, for any of its personnel being trained or performing duties under this MOU. DPS will cover the costs of all candidates' travel, housing and per diem while involved in training required for participation in this initiative.

All nominated troopers 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.

At the end of the initial year for which the participating troopers are certified, unless either party terminates this MOU pursuant to Section XVII, below, ICE will provide certified troopers with additional updated training on relevant administrative, legal and operational issues related to the performance of immigration-officer functions.

VII. CERTIFICATION AND AUTHORIZATION

The ICE Training Division will certify in writing to the ICE Special-Agent-in-Charge in New Orleans the names of those troopers who successfully complete training and pass all required testing. Upon receipt of Training Division certification, the Special-Agent-in-Charge will provide to the participating state troopers a signed authorization to perform specified immigration enforcement functions for an initial period of one year from the date of the authorization. ICE will also provide a copy of the authorization to DPS. Each certified trooper's actions under this MOU will be evaluated by the ICE supervisory special agent as addressed in Section IX, below.

When arresting or detaining a subject with limited English language proficiency, participating state troopers will provide an opportunity for such subjects to request an interpreter. Qualified foreign language interpreters will be provided by the DPS as needed.

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Authorization of a participating state trooper to act pursuant to this MOU may be revoked at any time by ICE or DPS. Such revocation will require immediate notification of the other party to this MOU. The DPS Director and the ICE Special-Agent-in-Charge in New Orleans will be responsible for notification of the appropriate personnel in their respective agencies. If a participating state officer becomes the subject of a complaint of any sort that may result in that officer receiving employer discipline or becoming the subject of a criminal investigation, DPS 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 a participating trooper's exercise of immigration enforcement authority 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

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

IX. ICE SUPERVISION

Immigration enforcement activities of the participating state troopers will be supervised and directed by ICE special agents in Huntsville, Birmingham and Montgomery. Participating state troopers cannot perform any ICE officer functions pursuant to the DHS authorities herein except when working under the supervision of an ICE special agent. Each participating trooper shall give notice to the ICE special agent as soon as practicable after, and in all cases within 24 hours of, any arrest made under the authorities set forth in this MOU. The arrest actions of each participating state trooper will be reviewed by the ICE special agent on an ongoing basis to ensure compliance with the requirements of the immigration laws and procedures and to assess the need for follow up on-the-job training or guidance for that specific participating state trooper.

If a conflict arises between an order or direction provided by the ICE special agent and DPS rules, standards, or policies, the conflict shall be promptly reported to the Special-Agent-in-Charge or designee and Director of DPS or designee when circumstances safely allow the concern to be raised. The Special-Agent-in-Charge and the Director of DPS shall attempt to resolve the conflict.

X. LIABILITY AND RESPONSIBILITY

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

Participating state troopers 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 MOU. 8 U.S.C. § 1357(g)(7). It is the understanding of the parties to this MOU that participating state troopers will have the same immunities and defenses as do ICE officers from personal liability from tort suits based on actions conducted under this MOU. 8 U.S.C. § 1357(g)(8).

Participating troopers who are named as defendants in litigation arising from activities carried out under this MOU may request representation by the Department of Justice. Such requests must be made in writing directed to the Attorney General of the United States, and be presented to the ICE Special-Agent-in-Charge in New Orleans. The Special-Agent-in-Charge will forward the trooper's request, together with a memorandum concerning the factual basis underlying the event or events at issue in the lawsuit to the ICE Office of the Principal Legal Advisor, which will forward the request, the factual statement, 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.

DPS 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 a trooper under threat of disciplinary action in an administrative investigation cannot be used against that trooper in subsequent criminal proceedings, consistent with *Garrity v. New Jersey*, 385 U.S. 493 (1967).

The Giglio decision (405 U.S. 150 (1972)) relates to disclosure of potential impeachment information about potential witnesses or affiants in a criminal case or investigation. As the activities of participating state troopers under this MOU are undertaken under federal authority, the participating state troopers will comply with federal standards and guidelines relating to such cases.

XI. CIVIL RIGHTS STANDARDS

Pursuant to this MOU, participating state troopers will perform certain federal immigration enforcement functions. In doing so, these participating state troopers are bound by all federal civil rights statutes and regulations.

XII. COMPLAINT PROCEDURES

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

XIII. REQUIRED REVIEW OF ACTIVITIES

The ICE Assistant Secretary and the DPS Director 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 Alabama at locations to be agreed upon by the parties. These reviews are intended to assess the use made of immigration arrest authority and to ensure compliance with the terms of this MOU. Steering committee participants will be supplied with specific information on case reviews, officer evaluations, complaints filed, media coverage, and, to the extent practicable, statistical information on increased immigration enforcement activity in Alabama. An initial review meeting will be held no later than nine months after certification of the initial class of troopers under Section VII, above.

XIV. COMMUNITY OUTREACH

DPS will engage in community outreach with individuals and organizations expressing an interest in this MOU. ICE will participate in such outreach to whatever degree DPS determines is desirable and appropriate.

XV. RELATIONS WITH THE NEWS MEDIA

DPS hereby agrees to coordinate with ICE any release of information to the media regarding actions taken under this MOU. The points of contact for DPS and ICE for this purpose can be found at Appendix C.

XVI. MODIFICATION OF THIS MOU

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

XVII. DURATION AND TERMINATION OF THIS MOU

This MOU will be in effect from the date of signing until terminated by either party.

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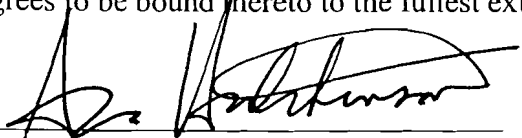
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Either party may, upon written notice to the other party, terminate this MOU at any time. Such notice shall be delivered personally or by certified or registered mail. Termination of the MOU shall take effect immediately after receipt of such notice.

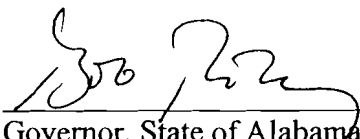
Except for the rights of participating state troopers as described in Section X, this MOU does not, is not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

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 this MOU, and agrees to be bound thereto to the fullest extent allowed by law.



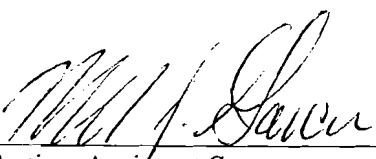
Under Secretary
Border and Transportation Security
9/10/03

Date



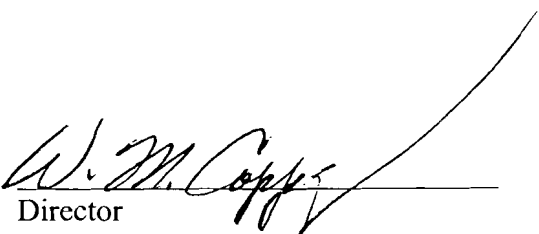
Governor, State of Alabama
9/10/03

Date



Acting Assistant Secretary
Bureau of Immigration and Customs
Enforcement
8-28-03

Date



Director
Alabama Department of Public Safety
9/10/03

Date

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Appendix A: Points of Contact

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

For DPS: Major b6,b7c
Alabama Department of Public Safety
P.O. Box 1511
Montgomery, AL 36102-1511

For ICE: b6,b7c Special-Agent-in-Charge
1250 Poydras St., Suite 2200
New Orleans, LA 70113

Appendix B: Complaint Procedure

This project is a joint effort between DHS/ICE and DPS in which state troopers are authorized to perform immigration enforcement duties in specific situations under Federal authority. As such, the training, supervision, and performance of participating state troopers 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 certain state troopers to perform certain immigration enforcement functions. Complaints filed against those troopers in the course of their non-immigration duties will remain the domain of the DPS and be handled in accordance with DPS Policy Order No. 19. The DPS will also handle complaints filed against troopers who may execute 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 state troopers relating to their immigration enforcement can be reported in a number of ways. The ICE Headquarters Office of Internal Audit (OIA) and DPS Standards and Integrity Unit (SIU) will coordinate complaint receipt and investigation. The ICE OIA will forward appropriate complaints to the Department of Homeland Security's Office of Inspector General (DHS OIG) for review and referral to the Department of Justice's Civil Rights Division (DOJ CRT) as appropriate.

The ICE OIA will coordinate complaints related to participating state troopers with the DPS SIU as detailed below. Should circumstances warrant investigation of a complaint by the DHS OIG or the DOJ CRT, this will not preclude the DHS OIG, DOJ CRT or ICE OIA from conducting the investigation in coordination with DPS SIU.

The ICE OIA will adhere to established procedures relating to reporting and resolving allegations of employee misconduct, and the DPS SIU will follow applicable DPS policies and procedures, personnel rules, Alabama statutes, and collective bargaining agreements.

I. Complaint Reporting Procedures

A. Dissemination of Complaint Reporting Procedures

Complaint reporting procedures shall be disseminated throughout the State of Alabama (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, DPS, troopers 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 Atlanta, Georgia Field Office of the Department of Homeland Security, Office of the Inspector General at (770) 220-5290, or at the toll-free hotline number 1-800-323-~~8~~603, and
2. Telephonically to the ICE OIA at (202) 514-5765, or
3. Via facsimile to the ICE OIA at (202) 514-7244, or
4. Via mail as follows:

U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
Office of Internal Audit
Internal Investigations Branch
425 I St., NW
Room 3260
Washington, D.C. 20536

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

1. The applicable DPS Divisional **Commander**;
2. Any participating state trooper's **supervisor**; or
3. DPS Standards and Integrity Unit as **follows:**

Capt. Jerry Ogletree
Standards and Integrity Unit
Alabama Department of Public **Safety**
P.O. Box 1511
Montgomery, AL 36102
Phone (334) 242-4448

D. Review of Complaints

1. All complaints (written or oral) reported to DPS directly, which involve activities connected to immigration enforcement activities, will be reported to the ICE OIA. The ICE OIA will verify participating trooper status under the MOU with the assistance of the office of the ICE Special Agent in Charge in New Orleans.

2. Complaints received by any ICE entity will be reported directly to the ICE OIA as per existing ICE policies and procedures.

For both of the above, the ICE OIA, 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.

3. Complaints reported directly to the ICE OIA will be shared with DPS SIU when the complaint involves state troopers. 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 OIA will undertake a complete review of each complaint in accordance with existing ICE allegation criteria and reporting requirements. As stated above, the ICE OIA 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. Acknowledgment of Complaints

The ICE OIA will acknowledge receipt of complaints from the public, when the complainant can be identified.

B. Referral of Complaints to DPS SIU

The ICE OIA will refer complaints, as appropriate, involving state personnel to the DPS SIU for resolution. DPS SIU will inform ICE OIA of the disposition and resolution of any complaints referred by ICE OIA.

C. Interim Action Pending Complaint Resolution

Whenever any participating state trooper is under investigation and subject to interrogation by DPS for any reason that could lead to disciplinary action, demotion, or dismissal, the requirements of DPS Policy Order No. 19 shall be honored. If appropriate, a participating state trooper may be removed from participation in the activities covered under the MOU pending resolution of an inquiry.

D. 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.

E. Notification of Resolution of a Complaint

The ICE OIA will coordinate with the DPS SIU to provide appropriate notification both to complainants and, as appropriate, the subject(s) of a complaint with regard to the resolution of a complaint.

Appendix C: Media Coordination Points of Contact

As called for in Section XV of the MOU, the ICE and DPS points of contact for purposes of coordinating media contacts are:

For DPS:

DPS Public Information Unit

Captain Hugh McCall
Public Information Officer
Alabama Department of Public Safety
P.O. Box 1511
Montgomery, AL 36102
334-242-4445

For ICE:

William Strassberger, Acting Director
Office of Public Affairs
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
425 I Street, NW
Washington, DC 20536
(202) 514-6771