

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) constitutes an agreement between the United States (U.S.) Department of Homeland Security (DHS) and the State of Florida to continue the program under which the DHS certifies state and local law enforcement officers working specifically as part of the State of Florida's Regional Domestic Security Task Forces (RDSTFs) to perform certain immigration officer enforcement functions as specified herein.

This program was initiated pursuant to a 2002 MOU between the U.S. Department of Justice and the State of Florida (copy attached at Appendix A). The immigration functions of the U.S. Department of Justice were transferred to the DHS in 2003 under the Homeland Security Act, Public Law 107-296. The functions being performed under certification pursuant to the 2002 MOU are those of the DHS Bureau of Immigration and Customs Enforcement (ICE). The DHS and ICE are, thus, the appropriate federal parties to this new MOU and agree to the terms and obligations of the 2002 MOU entered into by the U.S. Department of Justice. The Florida Department of Law Enforcement (FDLE) represents the State of Florida in the implementation and administration of this MOU.

### I. PURPOSE

The State of Florida and DHS are satisfied with the results of the initial pilot program, and the purpose of this MOU is to continue the program under which state and local law enforcement officers (participating state and local officers) assigned to the RDSTFs are trained and certified to perform certain functions of an immigration officer. The purpose of this program, and this MOU, is to enable participating state and local officers to perform immigration investigative and enforcement functions in the context of their participation in the RDSTFs and in support of Florida's general efforts to promote and ensure domestic security. In this context, should any situation involve a significant increase in attempted sea arrivals that could lead to a mass influx of illegal immigration to Florida that is believed to involve domestic security concerns, the officers may, in addition to their regular RDSTF efforts, be utilized in their immigration capacity in responding to any such emergency and maintaining domestic security. Any such utilization will be upon joint approval of the State of Florida and DHS.

The parties agree to continuing application of all terms and conditions of the 2002 MOU except as expressly changed or supplemented by this document. All references to "INS" in that 2002 MOU shall be understood to refer now to ICE. All references to the "INS District Director" in Miami shall refer to the respective ICE Special-Agent-in-Charge, either in Miami or in Tampa. Matters pertaining to the Miami RSDTF will be under the jurisdiction of the ICE Special-Agent-in-Charge in Miami; matters pertaining to all other RSDTFs will be under the jurisdiction of the ICE Special-Agent-in-Charge in Tampa.

II. LEGAL AUTHORITY

Section 287(g) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1357(g), as amended by the Homeland Security Act, authorizes the Secretary of DHS to enter into written agreements with a State or any political subdivision of a State so that qualified officers of the State or political subdivision can perform certain functions of an immigration officer. This MOU constitutes such a written agreement.

III. DESIGNATION OF FUNCTIONS

For the purposes of this MOU, the functions that may be performed by the participating state and local officers are indicated below with their associated authorities:

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 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).</li> <li>• 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).</li> </ul>	<ul style="list-style-type: none"> <li>• Interrogate in order to determine probable cause for an immigration arrest.</li> <li>• Arrest without warrant for civil and criminal immigration violations – must notify ICE of any arrests within twenty-four (24) hours.</li> <li>• Complete required arrest reports and forms; prepare Notice to Appear for ICE supervisory signature.</li> <li>• Assist in pre-arrest and post-arrest case processing of individuals taken into custody by ICE, including: fingerprinting, photographing, interviewing, etc.</li> </ul>

AUTHORITY (continued)	FUNCTIONS (continued)
<ul style="list-style-type: none"> <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>• Detainer authority. 8 CFR 287.7.</li> <li>• Transportation of aliens. INA § 236.</li> </ul>	<ul style="list-style-type: none"> <li>• Prepare affidavits and take sworn statements.</li> <li>• Prepare immigration detainers.</li> <li>• Detain arrested aliens in ICE-approved detention facilities.</li> <li>• Transport aliens after arrest.</li> </ul>

In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating state and local officers in exercising these authorities shall be DHS or ICE policies and procedures. However, when engaged in immigration-related operations, no participating officer will be expected or required to violate or otherwise fail to maintain the employing entity's standards of conduct, or be required to fail to abide by restrictions or limitations as may otherwise be imposed by law, or the employing entity's rules, standards, or policies. Exercise of immigration officer authority by participating state and local officers shall be in the context of promoting domestic security by and through the RDSTF.

**IV. NOMINATION OF OFFICERS**

The FDLE will consult with ICE concerning the level of staffing needed to supplement the initial thirty-five (35) participating state and local officers who were certified pursuant to the 2002 MOU. When the FDLE and ICE have agreed on size and timing for a new training class, FDLE will determine how officers are to be nominated for participation in the new class. The employing entity for each candidate must indicate that it will allow the candidate to work within the RDSTF as a significant portion of the candidate's overall work responsibilities for a minimum period of 1 year. The FDLE will compile and review the nominations and submit to ICE the agreed-upon number of candidates for designation. For each candidate submitted, ICE may request any information necessary for a background check and evaluation for suitability to participate in the program. All candidates must be United States citizens. All candidates will have at least 3 years experience as a sworn law enforcement officer and will have attained at least an Associate's Degree in higher education. All candidates must be approved by ICE and must qualify for appropriate federal security clearances. Should a candidate not be approved, a substitute candidate may be submitted. Each candidate's employer must indicate its approval of this assignment in writing.

## V. TRAINING

The ICE will provide appropriate training for new classes of nominated officers tailored to the immigration officer function(s) under this MOU and the statutory mission of the RDSTFs at a mutually designated site in Florida, utilizing ICE-designed curriculum and competency testing. Training will be designed to educate participating state and local officers on the scope of officer authority under this MOU and provide the skills and background required for proper exercise of those authorities. The curriculum will include significant training on immigration law, but will also include other topics, such as cross-cultural issues, use of force policy, civil rights law, liability and related issues. ICE will provide all training materials. All nominated officers 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.

Based on the evaluation conducted and the input received from interviews with the initial group of participating state and local officers who were certified under the 2002 MOU, ICE will provide refresher training on relevant administrative, legal and operational issues related to the performance of immigration-officer functions to that initial group. The needs of new classes will similarly be monitored and refresher training conducted as agreed between ICE and FDLE.

The employing entity is responsible for the salaries and benefits, including overtime, for any of its personnel being trained or performing duties under this MOU. The FDLE will cover the costs of all candidates' housing and *per diem* while involved in training required for participation in this program. Costs of travel to and from required training will be the employing entity's responsibility.

## VI. CERTIFICATION AND AUTHORIZATION

Certification of new classes, individual authorizations, and revocation of authorizations will be handled in accordance with the 2002 MOU. The performance of participating state and local officers will be reviewed as part of the steering committee review of activities conducted pursuant to Section IX of this MOU, in lieu of quarterly evaluations called for in the 2002 MOU.

ICE will extend initial authorization of any participating state or local officer for an additional year upon attestation from the FDLE that the individual officer has not been subject to disciplinary proceedings, has not been the subject of a substantiated public complaint, and has been designated for continuing participation in one of the RSDTFs. Any authorization may be revoked pursuant to the terms of the 2002 MOU at any time after the first year of the officer's participation, including but not limited to situations where the participating officer is no longer employed as a law enforcement officer, is no longer assigned to duties with an RSDTF, or fails to attend any required refresher training. The employing agency of any participating state or local officer may also terminate or limit the officer's participation in the RDSTF at any time after that

officer has completed a full year of participation following training and certification. When significant reasons warrant, ICE, FDLE or the employing entity may terminate an officer's participation prior to completion of the first full year of participation. Complaints relating to immigration enforcement activities conducted pursuant to this MOU shall be handled as specified in Appendix B. Further, if a participating state or local officer becomes the subject of an allegation of any sort (including internal investigations) that may result in that officer being the subject of disciplinary action or criminal investigation, the employing entity shall, to the extent allowed by state law, immediately notify FDLE and ICE of the allegation. ICE retains the discretion to determine whether the officer's authorization under this MOU should be revoked or suspended pending resolution of the complaint or investigation.

## VII. ICE SUPERVISION OF PARTICIPATING STATE AND LOCAL OFFICERS

When assigned to an RDSTF, participating state and local officers are under the primary supervision and control of the RDSTF Director, who shall determine the allocation of officer resources and the nature, extent, and length of each officer's investigative assignments and tasks. When an assignment or task involves exercise of immigration officer functions, those functions will be supervised and directed by the ICE officer assigned to the respective RDSTF. Participating state and local officers cannot perform any immigration officer function utilizing authority granted pursuant to this MOU except when performing those functions under the direct supervision of the ICE officer. This immigration supervision function does not supersede the overall supervision and control of the involved officer by the RDSTF Director. The ICE officer shall coordinate involvement of such state or local officers in immigration enforcement operations with the RDSTF Director to assure appropriate utilization of personnel in RDSTF efforts. Participating state and local officers are not to be utilized in routine ICE operations unless the operation has a nexus to the RDSTF's domestic security and counter-terrorism mandate.

If at any time the ICE officer determines that an immigration-related operation should be terminated, all actions related to said operation are to be promptly terminated in a manner assuring the safety of all involved law enforcement officers. Nothing in this MOU, however, limits RDSTF officers or agents who are within their normal territorial jurisdiction(s) from acting unilaterally as officers or agents of their employing entity to engage in continued investigative or enforcement actions as authorized by their employing entity. Any such actions shall not be considered the operations of ICE or the RDSTF and shall not fall within the privileges and obligations of this MOU. ICE, the RDSTF and its member agencies are not responsible for the actions of any participating agency or its officers or agents taken after the immigration-related RDSTF operation has been terminated or any actions of a participating state or local officer performed outside the scope of this MOU.

If a conflict arises between an order or direction provided by the assigned ICE officer and the rules, standards, or policies of FDLE or a participating state or local officer's employing entity, the conflict shall be promptly reported to the appropriate ICE Special-Agent-in-Charge

when circumstances safely allow the concern to be raised. The Special-Agent-in-Charge or designee, in conjunction with the RDSTF supervisor, shall attempt to resolve the conflict in a manner to allow the immigration enforcement operation to continue appropriately. No officer or agent shall be required to knowingly violate the policy of his or her employing agency while participating in immigration enforcement operations.

#### VIII. UNCHANGED PROVISIONS

All terms and conditions of the 2002 MOU are in effect unless expressly changed or supplemented. As such, this MOU incorporates by reference those sections of the 2002 MOU entitled "Costs and Expenditures," "Liability and Responsibility," "Standards," and "Complaint Procedures" in their entirety. These sections continue in force. The Complaint Procedure at Appendix B has been revised to reflect new DHS and ICE organizational structures.

#### IX. REVIEW OF ACTIVITIES

The Assistant Secretary of ICE and the Commissioner of FDLE shall establish a steering committee that will meet periodically to review and assess the immigration-related operations that have been conducted by the RDSTFs. The steering committee will meet periodically in Florida at locations selected by FDLE. These reviews are intended to assess the effectiveness of the operations and to assure that efforts remain focused upon the investigation of domestic security concerns and counter-terrorism efforts, and further to review any complaints filed or any recurring problems noted by FDLE or ICE officials.

#### X. RELATIONS WITH THE NEWS MEDIA

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

#### XI. MODIFICATION OF THIS MOU

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

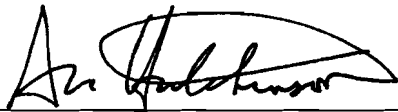
#### XII. DURATION AND TERMINATION OF THIS MOU

This MOU will be in effect from the date of signing until such time as terminated by either party. Either party, upon written notice to the other party, may terminate it 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.

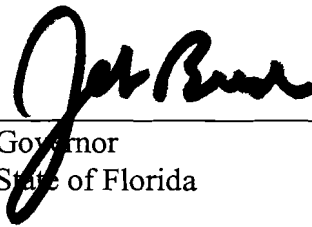
Except for the rights of participating state and local officers as described in the 2002 MOU, this MOU does not, is not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

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 bound thereto to the fullest extent allowed by law.



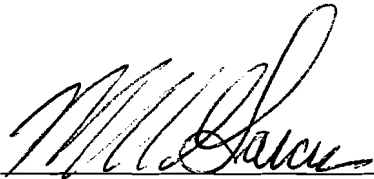
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Under Secretary,  
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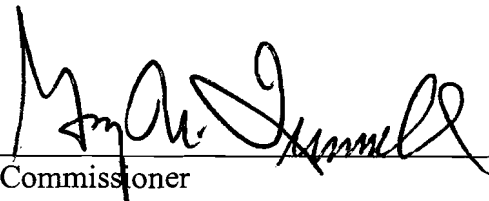
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Governor  
State of Florida

12/8/03  
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Assistant Secretary  
U.S. Immigration and Customs Enforcement

11/26/03  
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Date



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Commissioner  
Florida Department of Law Enforcement

12/2/03  
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Date