

## **MEMORANDUM OF AGREEMENT**

### **BETWEEN**

#### **U.S. DEPARTMENT OF HOMELAND SECURITY IMMIGRATION AND CUSTOMS ENFORCEMENT**

### **And**

#### **NORTH CAROLINA STATE BUREAU OF INVESTIGATION**

### **I. PURPOSE**

The purpose of this Memorandum of Agreement (MOA) is to set forth the responsibilities of the Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) and the State Identification Bureau (SIB) regarding implementation of the Secure Communities (SC) initiative related to biometric interoperability. SC is a comprehensive ICE initiative that focuses on the identification and removal of aliens who are convicted of a serious criminal offense and are subject to removal, including the utilization of advanced biometric and communications technology to share information among law enforcement agencies (LEAs) to identify, detain and remove from the United States aliens who have been convicted of a serious criminal offense and are subject to removal.

### **II. AUTHORITY**

Immigration and Nationality Act (INA) provisions regarding identification, detention, arrest and removal of aliens (8 USC §1226(c); 8 USC §1226(d); 8 USC §1226(e); 8 USC §1227(a) (2); and 8 USC §1228); the INA provision regarding liaison activities with internal security officers and data exchange (8 USC §1105); and FY 2008 DHS Appropriations Act (Pub. L. No. 110-161, 121 Stat. 1844, 2365 (2007)).

### **III. THE GOALS OF SECURE COMMUNITIES**

ICE is committed to improving community safety by transforming the manner in which the federal government cooperates with state and local LEAs to identify, detain and remove aliens convicted of a serious criminal offense. ICE utilizes advanced technology to improve information sharing among LEAs and will apply a risk-based methodology to focus resources.

To accomplish this goal, ICE leverages business and technical agreements between the DHS United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program's Automated Biometric Identification System (IDENT) and the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Division Integrated

Automated Fingerprint Identification System (IAFIS). The combined biometric and communications technology is known as IDENT/IAFIS Interoperability.

For the purpose of SC, the SIB and the state and local LEAs will continue to operate pursuant to the FBI CJIS Division's established policies and agreements. This MOA does not affect a state's existing relationship with the FBI CJIS Division. Rather, the MOA builds on and enhances that relationship. Neither the SIB nor any state or local LEA that is subject to this MOA will be responsible for determining an individual's immigration status or whether a particular conviction renders an individual removable pursuant to the INA.

- A. The SC initiative focuses on three objectives:
  - i. Identify aliens in federal, state and local custody charged with or convicted of a serious criminal offense who are subject to removal and those aliens who have prior convictions for serious criminal offenses and are subject to removal who are currently at large;
  - ii. Prioritize enforcement actions to ensure apprehension and removal of aliens convicted of serious criminal offenses; and,
  - iii. Transform criminal alien enforcement processes and systems to achieve lasting results.
  
- B. ICE will employ a risk-based approach to identify aliens charged with or convicted of a serious criminal offense and incarcerated in jails and prisons throughout the United States who are eligible for removal based on the severity of their offenses. The risk basis for determining the threat to community safety relies on a three-level hierarchy of aggravated felonies and other serious offenses. Appendix A contains a description of the state and federal criminal offenses that comprise Levels 1, 2 and 3.
  - i. This approach will build on the ICE Criminal Alien Program (CAP), which is currently in use in all federal and state prisons.
  - ii. The SC risk-based approach classifies aliens convicted of a criminal offense into three levels, starting with those who present the greatest threat:

**Level 1:** Individuals who have been convicted of major drug offenses, national security crimes, and violent crimes such as murder, manslaughter, rape, robbery and kidnapping;

**Level 2:** Individuals who have been convicted of minor drug and property offenses such as burglary, larceny, fraud and money laundering; and

**Level 3:** Individuals who have been convicted of other offenses.

- iii. ICE is committed to identifying aliens convicted of serious criminal offenses who are subject to removal in all three category levels, with a priority assigned on the basis of risk to individuals convicted of Level 1 offenses. ICE continues to exercise discretion through its field offices in taking enforcement action in cases of aliens convicted of Level 2 and 3 offenses as each situation demands. At no time shall this MOA be construed to limit the discretion of ICE in managing detention resources.
- C. To facilitate the goals of SC, ICE is partnering with DHS components, including U.S. Citizenship and Immigration Services (USCIS), Customs and Border Protection (CBP) and the US-VISIT Program. ICE federal interagency partners include the Department of State, Department of Justice (DOJ), Bureau of Prisons, Executive Office for Immigration Review, Executive Office of United States Attorneys, U.S. Marshals Service and FBI CJIS Division. Appendix B contains acronyms and abbreviations frequently used in the SC initiative.

#### **IV. STATE IDENTIFICATION BUREAU (SIB) RESPONSIBILITIES**

- A. The SIB responsibility under this MOA begins when the LEA submits a Criminal Answer Required (CAR) request, as appropriate according to CJIS procedure, to SIB of the state in which the individual is being booked. SIB will then electronically send the fingerprints to the FBI CJIS Division. Receipt of the CAR will initiate a search of both IAFIS and US-VISIT IDENT. However, National Fingerprint File (NFF) states send fingerprints to the FBI CJIS Division only at the time of the initial arrest. Second or subsequent criminal bookings in the NFF states result in a Criminal Print Ident (CPI) file maintenance message to the FBI CJIS Division. In the case of a subsequent arrest for a National Fingerprint File (NFF) state, SIB will forward a CPI file maintenance message instead of a CAR to FBI CJIS Division. There is no change in IAFIS processing.
- B. If there is a match in IDENT, CJIS transmits the search results in a joint IDENT Data Response (IDR) and Immigration Alien Response (IAR) to the SIB. The SIB will in turn relay that response to the local LEA unless the SIB does not have the technical capability to do so. A “no match IDR” will be generated when a match is not found in IDENT.

#### **V. ICE RESPONSIBILITIES**

ICE will prioritize the processing of aliens convicted of Level 1 offenses. ICE will detain and seek to remove Level 1 offenders after the completion of the

individual's sentence. For those aliens who have prior Level 1 convictions that are discovered during the booking process, ICE will initiate steps to take such individuals into custody for removal based on their prior Level 1 conviction(s) as well as current charges, once the charges have been adjudicated.

- A. Once fingerprint information is received by IAFIS, it will be cross-checked against the DHS US-VISIT IDENT system.
- B. Upon receipt of an Immigration Alien Query (IAQ) from the FBI CJIS Division that there has been a match with the subject's fingerprint in IDENT, ICE Law Enforcement Support Center (LESC) will conduct an immigration status determination.
- C. When an alien is identified as having prior Level 1 convictions and is subject to removal or is currently charged with a Level 1 offense and is subject to removal, ICE will take the alien into custody after completion of the individual's sentence or when released from local custody and will institute removal proceedings, as necessary.
- D. ICE will rely on establishing in the field a "24/7" IDENT/IAFIS Interoperability response capability and may utilize video teleconferencing (VTC) to streamline the process of identifying and removing aliens convicted of a serious criminal offense.

## **VI. PERIOD OF AGREEMENT**

This MOA shall be effective upon signing by both parties and will remain in effect until terminated by either party in accordance with the Section (below): **MODIFICATIONS AND TERMINATION**.

## **VII. DISPUTE RESOLUTION**

The parties agree that, should any disagreements arise as a result of this MOA, the first attempt at resolution shall occur at the program office level with the area(s) of disagreement reduced to writing and submitted to the appropriate program office point of contact (POC). If a resolution cannot be reached at this level, the disagreement will be raised to the agency level in accordance with component procedures.

## **VIII. MODIFICATIONS AND TERMINATION**

This MOA may be modified at any time by mutual written consent of both parties.

This MOA will remain in effect from the date of signing until it is terminated by either party. Either party, upon 30 days written notice to the other party, may terminate the MOA at any time. A termination notice shall be delivered personally or by certified or registered mail and termination shall take effect 30 days after receipt of such notice.

Either party, upon written or oral notice to the other party, may temporarily suspend activities under this MOA when resource constraints or competing priorities necessitate. Notice of termination or suspension by ICE shall be given to the SIB POC. Notice of termination or suspension by the SIB shall be given to the ICE POC. The temporary suspension of activities will take effect immediately upon receipt of such notice.

Use of IDENT/IAFIS for the purposes of racial and/or ethnic profiling or other activity in violation of the Fourth Amendment of the United States Constitution is not permitted and may result in the suspension of the local jurisdiction engaged in the improper activity. ICE reserves the right to take appropriate remedial action if necessary.

#### **IX. COSTS AND EXPENDITURES**

Parties to this MOA are responsible for their own costs associated with carrying out activities under this MOA. Nothing in this MOA is intended to imply that either Congress or state or local legislatures will appropriate funding for activities under this MOA.

#### **X. RELEASE OF INFORMATION TO THE MEDIA AND OTHER THIRD PARTIES**

SIB may, at its discretion, communicate the substance of this MOA to law enforcement professional organizations expressing an interest in the law enforcement activities to be engaged in under this MOA. It is ICE practice to provide a copy of this MOA to requesting media outlets only after both parties have signed the MOA. Local LEAs are authorized to do the same. However, the release of statistical information regarding the SC initiative will be coordinated with the ICE Public Affairs Office POC identified in Appendix D.

SIB hereby agrees, to the extent authorized by law, to coordinate with ICE regarding information to be released to the media regarding actions taken under this MOA. The POCs for ICE and the SIB for this purpose are identified in Appendix C.

#### **XI. SUMMARY OF ICE AND STATE LAW ENFORCEMENT AGENCY RESPONSIBILITIES**

This MOA does not, nor is it intended to, nor shall be construed to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

By signing this MOA, each party represents it is fully authorized to enter into this MOA and accepts the terms, responsibilities, obligations and limitations of this MOA.

Date: 11.02.2009

Date: 10.23.09



Marc A. Rapp  
Acting Director, Secure Communities  
Immigration and Customs Enforcement



Wendy Brinkley  
Special Agent in Charge  
North Carolina State Bureau of Investigation

**APPENDIX A**

*Secure Communities Levels and Offense Categories by NCIC Code*

<b>Level 1 Crimes (NCIC Code)</b>	<b>Level 2 Crimes (NCIC Code)</b>	<b>Level 3 Crimes (NCIC Code)</b>
National Security* (0101-0199, 1602, 5204-5299)	Arson (2001-2099)	Military (0201, 2099)
Homicide (0901-0999)	Burglary (2201-2299)	Immigration (0301-0399)
Kidnapping (1001-1099)	Larceny (2301-2399)	Extortion (2102-2199)
Sexual Assault (1101-1199)	Stolen Vehicles (2401-2411, 2499)	Damage Property (2901-2903)
Robbery (1201-1299)	Forgery (2501-2599)	Family Offenses (3801, 3804-3899)
Aggravated Assault (1301-1399)	Fraud (2601-2699)	Gambling (3901-3999)
Threats (1601)	Embezzlement (2701-2799)	Commercialized Sex Offenses (4001-4099)
Extortion –Threat to Injure Person (2101)	Stolen Property (2801-2899)	Liquor (4101-4199)
Sex Offenses (3601-3699)	Damage Property w/Explosive (2904-2906)	Obstructing the Police (4802-4899)
Cruelty Toward Child, Wife (3802, 3803)	Traffic Offenses (5402-5499)	Bribery (5101-5199)
Resisting an Officer (4801)	Smuggling (5801-5899)	Health and Safety (5501-5599)
Weapon (5201-5203)	Money Laundering (6300)	Civil Rights (5699)
Hit and Run (5401)	Property Crimes (7199)	Invasion of Privacy (5701-5799)
Drugs (Sentence >1 year)	Drugs (Sentence < 1 year)	Elections Laws (5999)
		Conservation (6201-6299)
		Public Order Crimes (7399)

\***National Security** violations include the NCIC coded offenses of Sabotage, Sedition, Espionage and Treason (0101-0199); Terrorist Threats (1602); and Weapons, Arson/Incendiary Devices and Bombing offenses (5204-5299).

## APPENDIX B

### *Acronyms and Abbreviations*

<b>Acronym/Abbreviation</b>	<b>Definition</b>
CAP	Criminal Alien Program
CAR	Criminal Answer Required
CJIS	Criminal Justice Information Services
CPI	Criminal Print Identification
DHS	Department of Homeland Security
DOJ	Department of Justice
DRO	Detention and Removal Operations
FAQ	Frequently Asked Questions
FBI	Federal Bureau of Investigation
IAFIS	Integrated Automated Fingerprint Identification System
IAQ	Immigration Alien Query
IAR	Immigration Alien Response
ICE	Immigration and Customs Enforcement
IDENT	US-VISIT Automated Biometric Identification System
IDR	IDENT Data Response
LEA	Law Enforcement Agency
LESC	Law Enforcement Support Center
MOA	Memorandum of Agreement
OI	Office of Investigations
ORI	Originating Agency Identifier
POC	Point of Contact
SC	Secure Communities
SIB	State Identification Bureau
SOP	Standard Operating Procedures
US-VISIT	United States Visitor and Immigrant Status Indicator Technology



**APPENDIX C**

***Points of Contact***

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

**For the SIB:**

Wyatt Pettengill  
Assistant Special Agent in Charge  
North Carolina State Bureau of Investigation  
3320 Garner Road  
Raleigh, NC 27626  
wapettengill@ncdoj.gov

**For ICE Detention and Removal Operations (DRO):**

Felicia S. Skinner  
Field Office Director  
Detention and Removal Operations  
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(404) 893- [REDACTED] b6

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**For ICE Office of Investigations (OI):**

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Special Agent in Charge  
Office of Investigations  
1100 Centre Parkway  
Atlanta, GA 30344  
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(404) 763-5919 Fax

## **APPENDIX D**

### ***Public Information Points of Contact***

Pursuant to Section X. of this MOA, RELEASE OF INFORMATION TO THE MEDIA AND OTHER THIRD PARTIES, the signatories will coordinate with the ICE Public Affairs Office regarding release of any information about Secure Communities and/or IDENT/IAFIS Interoperability and agree to coordinate appropriate release of subsequent information to the media regarding actions taken under this MOA. The points of contact for coordinating such activities are:

#### **For the SIB:**

Wyatt Pettengill  
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#### **For ICE:**

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