

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (MOA) constitutes an agreement between the United States Immigration and Customs Enforcement Agency (ICE), an agency within the United States Department of Homeland Security (DHS), and the Massachusetts Department of Correction (DOC), an agency within the Executive Office of Public Safety of the Commonwealth of Massachusetts (EOPS), under which ICE authorizes up to a maximum of 12 nominated, trained, and certified DOC personnel to perform certain immigration enforcement functions as specified herein. It is the intent of the parties that this agreement will enable DOC to identify and process immigration violators in the Commonwealth's correctional facilities. ICE and DOC points of contact for purposes of this MOA are identified in Appendix A.

I. PURPOSE

The purpose of this MOA is to set forth the terms and conditions under which selected DOC personnel will be nominated, trained, and thereafter perform certain functions of an immigration officer within the Commonwealth's correctional facilities. Nothing contained herein shall otherwise limit the jurisdiction and powers normally possessed by participating DOC personnel. DOC retains supervision of all other aspects of the employment of and performance of duties by participating DOC personnel, including but not limited to, the scheduling of shifts and days off, use of sick, vacation and personal time, seniority, discipline, authorization and use of overtime, and selection of DOC personnel for the purposes set forth in this agreement. However, the exercise of the immigration enforcement authority granted under this MOA to participating DOC personnel shall occur only as provided in this MOA. This MOA also describes the complaint procedures available to members of the public regarding immigration enforcement actions taken by participating DOC personnel pursuant to this agreement. It is the intent of the parties that the authority conveyed by this MOA will be exercised by participating DOC personnel at specified DOC facilities within the Commonwealth of Massachusetts only.

II. AUTHORITY

Section 287(g) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1357(g), as amended by the Homeland Security Act of 2002, Public Law 107-296, authorizes the Secretary of the Department of Homeland Security, acting through the Assistant Secretary of ICE, to enter into written agreements with a state or any political subdivision of a state so that qualified personnel can 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 DOC 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 DOC personnel be subject to ICE supervision while performing immigration-related duties pursuant to this MOA. For the purposes of this MOA, ICE officers shall provide supervision for participating DOC personnel only as to immigration enforcement functions.

DOC retains supervision of all other aspects of the employment of and performance of duties by participating DOC personnel.

Participating DOC personnel shall initially be selected from staff assigned to the Reception Centers for male and female inmates, respectively, with the expectation that participating DOC personnel may be assigned to other DOC correctional facilities as determined by DOC.

IV. ASSIGNMENTS

Before participating DOC personnel receive authorization to perform immigration officer functions granted under this MOA, they must successfully complete mandatory 4-week training, as described in Section VIII, in the enforcement of federal immigration laws and policies as provided by ICE instructors and thereafter pass examinations equivalent to those given to ICE officers. Only participating DOC personnel who are selected, trained, authorized, and supervised, as set out herein, have authority pursuant to this MOA to conduct the immigration officer functions enumerated in this MOA.

Participating DOC personnel performing immigration-related duties pursuant to this MOA will be DOC personnel assigned to the Massachusetts Correctional Institutions at Framingham and Concord.

V. DESIGNATION OF AUTHORIZED FUNCTIONS

For the purposes of this MOA, participating DOC personnel will be authorized to perform the following functions pursuant to the stated authorities, subject to the limitations contained in this MOA:

- The power and authority 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)) and to process for immigration violations those individuals who are convicted of felony offenses under state law and who are serving a sentence in a DOC correctional facility;
- The power and authority to serve warrants of arrest for immigration violations (8 C.F.R. § 287.5 (e) (3)), so that inmates who are the subject of immigration enforcement actions pursuant to this MOA can appear before a federal immigration judge via video teleconference.
- 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)), to complete required criminal alien processing, including fingerprinting, photographing, and interviewing of aliens, as well as preparation of affidavits and the taking of sworn statements for ICE supervisory review;

- The power and 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), including the preparation of a Notice to Appear (NTA) application or other charging document, as appropriate, for the signature of an ICE officer for aliens in categories established by ICE supervisors;
- The power and authority to issue immigration detainers (8 C.F.R. § 287.7) and I-213, Record of Deportable / Inadmissible Alien, for processing aliens in categories established by ICE supervisors.
- The power and authority to detain and transport arrested aliens to ICE-approved detention facilities (8 C.F.R. § 287.5(c)(6)), in the event that DOC enters into an Inter-Governmental Service Agreement as described in Sections VI and X.

VI. DETENTION ISSUES

ICE will assume custody of individuals who have been convicted of a state offense only after such individuals have concluded service of any sentence of incarceration. ICE will also assume custody of aliens with prior criminal convictions and when immigration detention is required by statute. The ICE Detention and Removal Field Officer Director or his designee will assess on a case-by-case basis the appropriate removal vehicle to be employed and whether to assume custody of individuals that do not meet the above criteria based on special interests or extenuating circumstances after processing by DOC. The immigration laws provide ICE Detention and Removal Operations (DRO) with the discretion to manage limited ICE detention resources, and ICE Field Office Directors may exercise this discretion, in appropriate cases, by declining to detain aliens whose detention is not mandated by federal statute.

DOC may elect to enter into an Inter-Governmental Service Agreement (IGSA) with ICE pursuant to which DOC will provide, for a reimbursable fee, detention of incarcerated aliens in DOC facilities, upon the completion of their sentences. Should DOC elect to enter into such an agreement, the DOC facility will be expected to meet the ICE detention standards for either a less than 72-hour or over 72-hour facility as determined by ICE, and consistent with the anticipated detention period. Any such agreement will be detailed in a separate document.

The parties understand that DOC will not continue to detain an alien after that alien is eligible for release from DOC's custody in accordance with applicable law and DOC policy, except for a period of up to 48 hours, excluding Saturdays, Sundays, and any holiday, pursuant to an ICE detainer issued in accordance with 8 C.F.R. § 287.7, absent an IGSA in place as described above.

VII. NOMINATION OF PERSONNEL

The Commissioner of the Massachusetts Department of Correction will nominate candidates for initial training and certification under this MOA. For each candidate, 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. Necessary releases shall be obtained by DOC from each potential DOC employee

under consideration for the immigration officer functions set forth in this MOA, prior to any background check being conducted. All candidates shall have at least two years correctional work experience for DOC. All candidates must be approved by ICE and must be eligible to qualify for appropriate federal security clearances.

Should a candidate not be approved, a substitute candidate may be submitted if time permits the substitution to occur without delaying the start of training. Any future expansion in the number of participating DOC 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.

VIII. TRAINING OF PERSONNEL

ICE will provide participating DOC personnel with the mandatory 4-week training tailored to the immigration functions to be performed. Training will take place at a mutually designated site in Massachusetts, and will utilize ICE-designated curriculum and competency testing.

At a minimum, training will include: (i) discussion of the terms and limitations of this MOA; (ii) the scope of immigration officer authority; (iii) relevant immigration law; (iv) the ICE Use of Force Policy; (v) Civil Rights laws; (vi) the U.S. Department of Justice "Guidance Regarding the Use Of Race By Federal Law Enforcement Agencies" dated June 2003; (vii) public outreach and complaint procedures; (viii) liability issues; (ix) cross-cultural issues; and (x) the obligation 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 DOC personnel are trained and certified, ICE may provide additional updated training on relevant administrative, legal and operational issues related to the performance of immigration officer functions, unless either party terminates this MOA pursuant to Section XX, below. Local training on relevant issues will be provided on an ongoing basis by ICE supervisors or a designated team leader.

IX. CERTIFICATION AND AUTHORIZATION

The ICE Training Division will certify in writing to the ICE Special Agent in Charge and / or the ICE Field Office Director in Massachusetts the names of those DOC personnel who successfully complete training and pass all required testing. Upon receipt of Training Division certification, the ICE Special Agent in Charge and / or the ICE Field Office Director in Massachusetts will provide to the participating DOC 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 the DOC's Director of Human Resources. The ICE supervisory officer or designated team leader shall evaluate the activities of all DOC personnel certified under this MOA.

Authorization of participating DOC personnel to act pursuant to this MOA may be revoked at any time by ICE or DOC. Such revocation will require immediate notification of the other party to this MOA. The Commissioner of the Massachusetts Department of Correction and the ICE Special Agent in Charge and / or the ICE Field Office Director in Massachusetts will be

responsible for notification of the appropriate personnel in their respective agencies. If any participating DOC personnel are 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, or should the individual become otherwise unsuitable to continue as a participant pursuant to the terms of this MOA, DOC 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. The termination of this MOA shall constitute revocation of all immigration enforcement authorizations delegated hereunder.

X. COSTS AND EXPENDITURES

Participating DOC personnel will carry out designated functions at DOC expense, including salaries and benefits and official issue material.

ICE will provide training instructors and training materials, at ICE expense. DOC is responsible for the salaries and benefits, including overtime, for all of its personnel being trained or performing duties under this MOA, and for those personnel performing the regular functions of the participating DOC personnel while they are receiving training. DOC will cover the costs affiliated with the training required for participation in this agreement. ICE is responsible for the salaries and benefits of all of its personnel, including instructors and supervisors.

DOC may elect to enter into an Inter-Governmental Service Agreement (IGSA) with ICE pursuant to which DOC will provide, for a reimbursable fee, transportation for all incarcerated aliens in the DOC's facilities, upon the completion of their sentences, to a facility or location designated by ICE. DOC will provide to ICE, at no cost, an office within each participating DOC facility for ICE supervisory employees to work.

ICE agrees to be responsible for the purchase, installation, and maintenance of technology (computer / IAFIS / photo and similar hardware / software) and T-1 communication line necessary to support the investigative functions of participating DOC personnel at each DOC correctional facility with an active 287(g) program. The use of this equipment is to be limited to the performance of responsibilities authorized by this MOA under 287 (g) of the INA by participating DOC personnel. ICE also agrees to provide the necessary technological support and software updates for use by participating DOC personnel to accomplish the delegated functions. Such hardware, software, and other technology purchased by ICE shall remain the property of ICE and shall be returned to ICE upon any termination of this agreement, or when deemed necessary by the ICE Special Agent in Charge and / or the ICE Field Office Director in Massachusetts.

XI. ICE SUPERVISION

Immigration enforcement activities conducted by the participating DOC personnel will be supervised and directed by ICE supervisory officers or the designated team leader in Massachusetts. Participating DOC personnel are not authorized to perform immigration officer functions, except when working under the supervision of an ICE officer, or when acting pursuant to the guidance provided by an ICE agent.

Participating DOC personnel shall give timely notice to the ICE supervisory officer within 24 hours of any detainer issued under the authorities set forth in this MOA. The actions of participating DOC personnel will be reviewed by the ICE supervisory officers 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 the purposes of this MOA, ICE officers will supervise participating DOC personnel only as to immigration enforcement functions. DOC retains supervision of all other aspects of the employment of and performance of duties by participating DOC personnel.

In the absence of a written agreement to the contrary, the policies and procedures to be utilized by participating DOC personnel in exercising these authorities shall be DHS and ICE policies and procedures, including the ICE Use of Force Policy. However, when engaged in immigration enforcement activities, no participating DOC personnel will be expected or required to violate or otherwise fail to maintain DOC's rules, standards, or policies, or be required to fail to abide by restrictions, limitations, or collective bargaining agreements, as may otherwise be imposed by law.

If a conflict arises between an order or direction provided of an ICE supervisory officer or ICE policy and the DOC's rules, standards, policies, or collective bargaining agreements, the conflict shall be promptly reported to the ICE Special Agent in Charge and / or the ICE Field Office Director in Massachusetts, or designees, and the Commissioner of the Massachusetts Department of Correction, or designee, when circumstances safely allow the concern to be raised. The ICE Special Agent in Charge and / or the ICE Field Office Director in Massachusetts, and the Commissioner of the Massachusetts Department of Correction, will attempt to resolve the conflict.

XII. REPORTING REQUIREMENTS

In order to maximize the effectiveness of this program, DOC will share with ICE relevant information in its possession concerning inmates who have been the subject of immigration enforcement actions pursuant to this MOA.

XIII. LIABILITY AND RESPONSIBILITY

If any participating DOC personnel are the subjects of a complaint of any sort that may result in that individual receiving employer discipline or becoming the subject of a criminal investigation or civil lawsuit, DOC will, to the extent allowable by state law, immediately notify ICE of the existence and nature of the complaint. The resolution of the complaint shall also be promptly reported to ICE. Complaints regarding the exercise of immigration enforcement authority by participating DOC personnel will be handled as described below.

Except as otherwise noted in this MOA or allowed by federal law, DOC will be responsible and bear the costs of participating DOC personnel with regard to their property or personnel expenses incurred by reason of death, injury or incidents giving rise to liability.

Participating DOC personnel will only be treated as federal employees 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 DOC personnel will enjoy the same defenses and immunities available to ICE officers from personal liability arising from tort lawsuits based on actions conducted in compliance with this MOA. 8 U.S.C. § 1357 (g) (8).

Participating DOC personnel 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 will be handled in coordination with the ICE Special Agent in Charge and / or the ICE Field Office Director in Massachusetts. Requests for representation must be presented to the ICE Office of the Chief Counsel at the John F. Kennedy Federal Building, Room 425, Boston, MA 02203. Any request for representation must be clearly marked "Subject to Attorney-Client Privilege." The Office of the Chief Counsel will forward the individual's request, together with a memorandum outlining 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 an advisory statement opining whether such representation would be in the interest of the United States, to the Director of the Constitutional and Specialized Torts Staff, Civil Division, United States Department of Justice.

DOC 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 DOC 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 (1967).

As the activities of participating DOC personnel under this MOA are undertaken under federal authority, the participating DOC personnel will comply with federal standards and guidelines relating to the Supreme Court's decision in Giglio v. United States, 405 U.S. 150 (1972), and its progeny, which relates to the disclosure of potential impeachment information about possible witnesses or affiants in a criminal case or investigation.

XIV. COMPLAINT PROCEDURES

The complaint reporting and resolution procedure for allegations of misconduct by participating DOC personnel, with regard to activities undertaken under the authority of this MOA, is included at Appendix B.

XV. CIVIL RIGHTS STANDARDS

Participating DOC personnel who perform certain federal immigration enforcement functions are bound by all federal civil rights statutes and regulations, including the U.S. Department of Justice "Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies" dated June 2003.

Participating DOC personnel shall provide an opportunity for subjects with limited English language proficiency to request an interpreter. Qualified foreign language interpreters services shall be provided by the DOC as needed, utilizing the contracted telephonic services currently provided by DOC to non-English speaking inmates.

XVI. STEERING COMMITTEE

The ICE Special Agent in Charge and/or the ICE Field Office Director in Massachusetts and the Commissioner of the Massachusetts Department of Correction will establish a steering committee that will meet periodically to review and assess the immigration enforcement activities conducted by the participating DOC personnel and to ensure compliance with the terms of this MOA. The steering committee will meet periodically in Massachusetts at locations to be agreed upon by the parties, or via teleconference. Steering committee participants will be supplied with specific information on case reviews, individual participants' evaluations, complaints filed, media coverage, and, to the extent practicable, statistical information on increased immigration enforcement activity in Massachusetts. An initial review meeting will be held no later than nine months after certification of the initial class of participating DOC personnel under Section IX, above.

XVII. COMMUNITY OUTREACH

DOC 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 DOC request.

XVIII. RELATIONS WITH THE NEWS MEDIA

DOC may, at its discretion, communicate the substance of this agreement to organizations and groups expressing an interest in the law enforcement activities to be engaged in under this MOA. This MOA also describes the complaint procedures available to members of the public regarding actions taken by participating DOC personnel pursuant to this agreement.

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

XIX. MODIFICATION OF THIS MOA

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

XX. DURATION AND TERMINATION OF THIS MOA

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

Alien Assistance Program fall below levels acceptable to DOC or be terminated in its entirety, the Commonwealth of Massachusetts, in its sole discretion, may terminate this MOA.

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 Commissioner of the Massachusetts Department of Correction. Notice of termination or suspension by DOC shall be given to the ICE Field Office Director in Massachusetts.

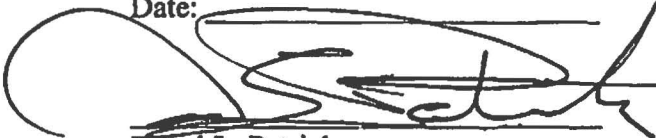
Except for the provisions contained in Section XIII, this MOA does not, is not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

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

Date: 3/26/07



Julie Myers
Assistant Secretary
Immigration and Customs Enforcement
Department of Homeland Security

Date: 

Deval L. Patrick
Governor
Commonwealth of Massachusetts

1. Complaint Reporting Procedures

Complaint reporting procedures will be disseminated as appropriate by DOC 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.

Complaints will be accepted from any source (e.g.: ICE, DOC, participating DOC personnel, and the public).

Complaints may 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 Resident Agent in Charge of the ICE OPR office in Hoboken, NJ at (201) 653-1996, ext. 260, 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

Complaints may also be referred to and accepted by the Commissioner of the Massachusetts Department of Correction or designee at:

Commissioner
Massachusetts Department of Correction
Central Headquarters
50 Maple Street, Suite 3
Milford, MA 01757

2. Review of Complaints

All complaints (written or oral) reported to DOC directly, which involve activities connected to immigration enforcement activities authorized under this MOA, will be reported to the ICE OPR. The ICE OPR will verify participating personnel status under the MOA with the assistance of the Special Agent in Charge of the ICE Office of Investigations in Massachusetts. Complaints received by any ICE entity shall be reported directly to the ICE OPR as per existing ICE policies and procedures, and to the Commissioner of the Massachusetts Department of Correction where the complaint concerns activities of DOC personnel participating in activities under this Agreement.

In all instances, 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 Commissioner of the Massachusetts Department of Correction when the complaint involves DOC personnel. Both offices will then coordinate appropriate investigative jurisdiction, which may include initiation of a joint investigation to resolve the issue(s).

3. 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 CRD. Complaints will be resolved using the existing procedures, supplemented as follows:

A. Referral of Complaints to Commissioner of the Massachusetts Department of Correction or designee.

The ICE OIA shall refer complaints, as appropriate, involving DOC personnel to the Commissioner of the Massachusetts Department of Correction or designee for resolution. The Commissioner of the Massachusetts Department of Correction shall inform ICE OPR of the disposition and resolution of any complaints referred by ICE OPR.

B. Interim Action Pending Complaint Resolution

Whenever any participating DOC personnel are under investigation and subject to interrogation by DOC for any reason that could lead to disciplinary action, demotion, or dismissal, or where the individual's continued suitability for participation in this MOA is in question, the requirements of the DOC Blue Book, relevant DOC policies, procedures, collective bargaining agreements, Massachusetts statutes and regulations shall be honored. 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 itself.

D. Notification of Resolution of a Complaint

ICE OPR will coordinate with the Commissioner of the Massachusetts Department of Correction or designee 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 XVIII 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 DOC:

Director of Communications and Outreach
Massachusetts Department of Correction
50 Maple Street, Suite 3
Milford, MA 01757-3698
Phone: (508) 422-3355

For ICE:

Public Affairs Officer Paula Grenier
Office of Public Affairs and Internal Communication
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
John F. Kennedy Federal Building
Government Center, Room 375A
Boston, MA 02203
Phone: (617) 565-4216