

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) constitutes an agreement between the United States Department of Justice (DOJ) and the State of Florida to create a pilot project pursuant to which the Immigration and Naturalization Service (INS) authorizes 35 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. The Florida Department of Law Enforcement (FDLE) represents the State of Florida in the implementation and administration of this MOU.

It is the intent of this pilot project to address the counter-terrorism and domestic security needs of the nation and the State of Florida by enhancing those efforts through the authorization of selected state and local law enforcement officers associated with the RDSTFs established under Florida state law to perform certain functions of an immigration officer. The efforts of officers so authorized under this MOU shall remain focused on counter-terrorism and domestic security goals.

I. PURPOSE

The purpose of this MOU is to set forth the terms and conditions under which a pilot project in Florida will be conducted concerning the authorization of state and local law enforcement officers (participating state and local officers) assigned to the RDSTFs to perform certain functions of an immigration officer, and how those participating state and local officers 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 officer as a member of the officer's employing state or local law enforcement entity (employing entity). Nothing herein shall otherwise limit the ability of participating RDSTF members to provide, as provided by or allowed by law, such assistance in any enforcement action unrelated to RDSTF operations as may be lawfully requested by a law enforcement officer having jurisdiction over any such incident, crime, or matter under consideration. However, the exercise of federal immigration authority pursuant to this MOU shall occur only as provided in this MOU.

II. AUTHORITY

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Public Law 104-208, enacted on September 30, 1996, amended the Immigration and Nationality Act by adding § 287(g), 8 U.S.C. § 1357(g), to that Act. Section 287(g)(1) permits the Attorney General to enter into written agreements with a state or any political subdivision of a state so that qualified state (or state subdivision) officers can perform certain functions of immigration officers. This MOU constitutes such a written agreement.

III. POLICY

This MOU sets forth the scope of the immigration officer functions that INS is authorizing the participating state and local officers 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 and local officers be subject to the direction and supervision of the INS while performing immigration-related duties pursuant to this MOU.

Before participating state and local officers will be authorized to perform immigration-officer functions, the participating state and local officers must successfully complete mandatory training in the enforcement of federal immigration laws and policies as provided by INS instructors and pass examinations equivalent to those given to INS officers. This MOU further sets forth requirements for regular evaluation of this project.

As part of their commitment to the communities they serve, FDLE and all employing entities will work to communicate the intent, focus, and purpose of this project to organizations and groups representing the interests of persons who may be affected by the investigative activity conducted under the authority of this MOU. This MOU also describes the complaint procedures available to members of the public regarding actions taken by officers pursuant to this agreement.

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

The INS and the FDLE points of contact for purposes 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 and local officers are indicated below with their associated authorities:

| AUTHORITY | FUNCTIONS |
|--|---|
| <ul style="list-style-type: none"> • Section 287 (a)(1) -power to interrogate any alien or person believed to be an alien as to his right to be or remain in the United States • Section 287(a)(2) -power to arrest (without warrant) 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 • Section 287(a)(4) -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 • Section 287 (b) -power and authority to administer oaths and to take and consider evidence • 8 CFR 287 .5(a)(1) -interrogate any alien or person believed to be an alien as to his right to be or remain in the United States • 8 CFR 287.5(a)(2) -administer oaths and to take and consider evidence • 8 CFR 287 .5(c)(1) -arrest of aliens under section 287(a)(2) of the Act for immigration violations • 8 CFR 287.5(a)(2) -arrest of aliens under section 287(a)(4) of the Act for felonies regulating the admission or removal of aliens • 8 CFR 287.7 (a) -detainers in general • INA § 236 -transportation | <ul style="list-style-type: none"> • Interrogate in order to determine probable cause for an immigration arrest • Complete required arrest reports and forms • Prepare immigration detainers • Prepare affidavits and take sworn statements • Transport aliens under arrest • Notify INS of any arrests made under this authority within 24 hours • Prepare a Notice To Appear (NTA) application for signature • Assist in pre-arrest and post-arrest case processing of individuals taken into custody by INS, including: fingerprinting, photographing, interviewing, etc. <p>Detain arrested aliens in INS approved detention facilities</p> |

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 INS policies and procedures. However, when engaged in INS-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.

V. NOMINATION OF OFFICERS

The co-directors of each RDSTF established under Florida law will present to the FDLE, candidates for designation under this Agreement. 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 the INS no more than 35 candidates for designation. For each candidate submitted, the INS may request any information necessary for a background check and evaluation for suitability to participate in the pilot project. 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 the INS 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.

VI. TRAINING

INS will provide appropriate training of nominated officers tailored to the designated immigration function(s) and statutory mission of the RDSTFs at a mutually designated site in Florida, utilizing the INS-designed curriculum and competency testing. This MOU covers outreach, training, and supervisory review in order to prevent improper actions by participating state and local officers. Training will include presentations on the pilot project, elements of the MOU, scope of officer authority, cross-cultural issues, use of force policy, civil rights law, liability and issues. The INS will provide all training materials. 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 pilot project. Costs of travel to and from required training will be the employing entity's responsibility.

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.

Should this MOU be extended, INS will provide certified officers with additional updated training on relevant administrative, legal, and operational issues related to the performance of immigration-officer functions.

VII. CERTIFICATION AND AUTHORIZATION

The INS Training Division will certify in writing to the INS District Director, Miami, officers who successfully complete training and pass a competency test. Upon receipt of Training Division certification, the INS will provide to the participating state and local officers a signed document setting forth the authorization to perform for an initial period of one year from the date of the authorization, specified immigration-officer functions. The INS will also provide a copy of the authorization to the FDLE and the employing agency of the officer receiving the authorization. Every 3 months, the officer's performance will be evaluated by the District Director/designee and the FDLE Commissioner or designee to ensure that the officer has conformed to the requirements of this MOU.

Participating state and local officers will provide an opportunity for subjects with limited English language proficiency to request an interpreter. Qualified foreign language interpreters will be provided by the arresting agency as needed.

Authorization of a participating state or local officer to act pursuant to this MOU may be revoked at any time by the INS, FDLE, or the employing entity of the officer. Such revocation will require immediate notification of the INS, FDLE, and/or, the employing entity by the revoking party. The FDLE Commissioner and the INS District Director/Miami will be responsible for notification of the appropriate personnel in their respective agencies. If a participating state or local 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, the employing entity shall, to the extent allowed by state law, immediately notify the FDLE and INS of the complaint. The resolution of the complaint shall be promptly reported to the INS and FDLE. The termination of this MOU shall constitute revocation of all INS authorizations conveyed herein.

VIII. COSTS AND EXPENDITURES

Participating RDSTF officers will carry out designated functions at state or local expense, including salaries and benefits, local transportation, and official issue material. The INS will provide training personnel, training materials and supervision.

IX. INS SUPERVISION

Immigration-related activities of the participating state and local officers will be supervised and directed by the INS representative to the respective RDSTF. Participating state and local officers cannot perform any immigration officer functions pursuant to the INS authority except when fulfilling their assigned RDSTF duties and under the direct supervision of the INS officer. However, the INS officer shall coordinate involvement of such state or local officers in INS-related operations with the RDSTF supervisor to assure appropriate utilization of personnel in RDSTF efforts. Participating state and local officers are not to be utilized in routine INS operations unless the operation has a nexus to the RDSTF's domestic security and counter-terrorism function. Each participating state or local officer engaged in an INS-related operation shall follow and adhere to the supervision and direction given by, the designated INS officer in charge of the operation. If at any time the INS officer determines that an INS-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 the INS or the RDSTF and shall not fall within the privileges and obligations of this MOU. The INS, the RDSTF, and its member agencies are not responsible for the actions of any participating agency or its officers or agents taken after the INS-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 INS officer and the rules, standards, or policies of a participating state or local officer's employing entity, the conflict shall be promptly reported to the District Director/designee when circumstances safely allow the concern to be raised. The District Director/designee, in conjunction with the RDSTF supervisor, shall attempt to resolve the conflict in a manner to allow the immigration-related 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 INS-related operations.

X. LIABILITY AND RESPONSIBILITY

The INS, FDLE, and all other participating employing agencies 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 and local officers 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). Participating state and local officers will have the same qualified immunity as do INS officers from personal liability from tort suits based on actions conducted under this MOU. 8 U.S.C. § 1357(g)(8).

The FDLE and any participating employing agency agree to cooperate with any federal investigation related to this MOU to the full extent of its available powers and to secure the cooperation of any subject officer's employing entity. It is understood that information provided by an officer under threat of disciplinary action in an administrative investigation cannot be used against that officer in subsequent criminal proceedings, consistent with Garrity v. New Jersey, 385 U.S. 493 (1967).

The Gigilo 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 and local officers under this MOU are undertaken under federal authority, the participating state and local officers, employing entities, and the FDLE will comply with federal standards and guidelines relating to such cases.

XI. STANDARDS

Pursuant to this MOU, participating state and local police officers will perform certain immigration officer enforcement functions. As such, these state and local officers are bound by all federal civil rights statutes and regulations.

XII. COMPLAINT PROCEDURES

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

XIII. REQUIRED REVIEW OF ACTIVITIES

The Commissioner of the INS 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 authorized/conducted by the RDSTFs. The steering committee will meet periodically in Tallahassee at FDLE Headquarters. These reviews are intended to assess the effectiveness of the operations and to assure that efforts remain focused upon the investigation of domestic security and counter-terrorism.

XIV. EVALUATION

An evaluation of this pilot project will be conducted by INS with the cooperation of the FDLE and the employing entities to include statistical evaluation, reports, records, officer evaluations, case reviews, records of complaints, media coverage, community interaction, site visits, etc. The purpose of this evaluation is to determine if the functions performed under this authorization have been of assistance to the State of Florida's efforts to address counter-terrorism and ensure domestic security. This evaluation will further assess the effectiveness of the INS training and orientation, supervision, complaint procedures, and community involvement. This evaluation will be conducted within 9 months after the certification of designated officers.

XV. COMMUNITY CONSULTATION

The FDLE and the INS, working together and separately, will continue to engage in community consultations throughout the implementation phase, and results of these consultations will be included in the evaluation of the pilot project.

XVI. RELATIONS WITH THE NEWS MEDIA

The FDLE and any affected participant's employing agency hereby agree to coordinate with the INS any release of information to the media regarding actions taken under this MOU. The points of contact for FDLE and INS for this purpose can be found at Appendix C.

XVII. MODIFICATION OF THIS MOU

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





XVIII. DURATION AND TERMINATION OF THIS MOU

This MOU will be in effect from the date of signing until September 1, 2003

Based on the evaluation process as set forth in paragraph XIV, the INS and the State of Florida may extend this MOU for an additional period of time by written agreement. 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 paragraph 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 Agreement, and agrees to bound thereto to the fullest extent allowed by law.

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|---|---|
|  Attorney General of the United States |  Governor State of Florida |
| <u>7-2-02</u> Date | <u>6-13-02</u> Date |
|  Commissioner Immigration and Naturalization Service |  Commissioner Florida Department of Law Enforcement |
| <u>6/11/02</u> Date | <u>6-13-02</u> Date |

APPENDIX A

POINTS OF CONTACT

For the INS:

Deputy Executive Associate Commissioner
for Field Operations
United States Immigration and
Naturalization Service
425 I Street NW
Washington, DC 20536

(202) 514-0078

For the FDLE:

Bob Cummings
Assistant Commissioner
Florida Department of Law Enforcement
P.O. Box 1489
Tallahassee, Florida 32302-1489

(850) 410-7001

I. Complaint Reporting Procedures

A Dissemination of Complaint Reporting Procedures

Complaint reporting procedures shall be disseminated throughout the State of Florida (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., INS, FDLE, agents or officers operating under the authority of this MOU, employing entities, and the public).

C. Reporting Mechanisms

Complaints can be reported to federal authorities as follows:

1. Telephonically to the Miami, Florida, Field Office of the DOJ/OIG, at (954) 535-2859, or at the toll- free hotline number 1-800-869-4499;
2. Telephonically to the INS/OIA at (202) 514-5765;
3. Via Facsimile to the INS/OIA at (202) 514- 7244, and
4. Via mail as follows:

United States Immigration and Naturalization Service
Office of Internal Audit
Internal Investigations Branch
425 I Street NW
Room 3260
Washington, DC 20536

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

1. The applicable FDLE Regional Director;
2. Any reporting or affected officer's supervisor; and

3. FDLE Office of Executive Investigations (EI) as follows

Jamie McLaughlin
Director
Office of Executive Investigations
Florida Department of Law Enforcement
2331 Phillips Road
Tallahassee, Florida 32308
(850) 410-8240
Fax: (850) 410-8288

D. Review of Complaints

1. All complaints (written or oral) reported to the FDLE or the employing entity directly which involve activities connected to the function or jurisdiction of the INS will be reported to the INS/OIA. The INS/OIA will verify participating officer status under the MOU with the assistance of the office of the INS District Director, Miami, Florida.

2. Complaints received by any INS entity will be reported directly to the INS/OIA as per INS AM Section 5.5.201.

For both of the above, the INS/OIA will, as appropriate, make an initial determination regarding DOJ 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 INS/OIA will be shared with FDLE/EI when the complaint involves state or local officers. 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 INS/OIA will undertake a complete review of each complaint against the allegation criteria and reporting requirements contained in the INS AM 5.5.201. As stated above, the INS/OIA will follow reporting requirements contained in AM 5.5.201 as they relate to the DOJ/OIG and/or the DOJ/CRT. Complaints will be resolved using the procedures specified in the aforementioned AM section, supplemented as follows:

APPENDIX B

COMPLAINT PROCEDURE

This pilot project is a joint effort between the Department of Justice (DOJ) and the Florida Department of Law Enforcement (FDLE) in which state and local law enforcement officers are authorized to perform immigration enforcement duties in specific situations under federal authority. As such, the training, supervision, and performance of participating state and local officers pursuant to this Memorandum of Understanding (MOU), as well as the protections for individuals' civil and constitutional rights, are to be closely evaluated. Part of that evaluation will be accomplished through the complaint reporting and resolution procedures, which the parties to this MOU have agreed to follow.

This MOU sets forth the process for designation of certain state and local officers to perform certain immigration enforcement functions within the framework of the Regional Domestic Security Task Forces. Complaints filed against those officers in the course of their regular duties will remain the domain of the FDLE Office of Executive Investigations (EI) or of the Internal Affairs Unit (IAU) of the respective local law enforcement entity providing personnel under this MOU (employing entity). The appropriate above-listed entity will also handle complaints filed against officers who may execute immigration authority, but who are not INS-designated under this MOU. The number and type of the latter complaints will be monitored as part of the project evaluation provided for in paragraph XIV of the MOU.

In order to simplify the process for the public, complaints against participating state and local officers relating to their immigration enforcement can be reported in a number of ways. The INS Office of Internal Audit (OIA) and FDLE/EI will coordinate complaint receipt and investigation. The INS OIA will forward appropriate complaints to the Department of Justice's Office of Inspector General (DOJ/OIG) for review and referral to the Department of Justice's Civil Rights Division (DOJ/CRT) as appropriate.

The INS OIA will coordinate complaints related to participating state and local officers with FDLE/EI as detailed below. Further referral, tracking, and coordination with the employing entity will be the responsibility of FDLE, as deemed appropriate. Should circumstances warrant investigation of a complaint by the DOJ, this will not preclude the DOJ/OIG, DOJ/CRT or INS/OIA from conducting the investigation in coordination with FDLE EI or contacting the employing entity as appropriate.

The INS/OIA will follow INS Administrative Manual (AM) Section 5.5.201, Reporting and Resolving Allegations of Employee Misconduct, and the FDLE EI will follow applicable FDLE Policies and Procedures, FDLE and State of Florida Personnel Rules, Florida Statutes, and Collective Bargaining Agreements.

A. Acknowledgment of Complaints

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

B. Referral of Complaints to FDLE/EI

The INS/OIA will refer complaints, as appropriate, involving state or local personnel to the FDLE/EI for resolution. Upon consultation with INS/OIA, FDLE/EI may refer the complaint to the local employing agency for investigation. FDLE/EI will be advised of the course and outcome of the investigation in order to coordinate with INS/OIA regarding an appropriate notification of resolution of the complaint.

C. Interim Action Pending Complaint Resolution

Whenever any state or local officer assigned under the MOU is under investigation and subject to interrogation by members of his or her employing agency for any reason that could lead to disciplinary action, demotion, or dismissal, the requirements of section 112.531, Part VI of the Florida Statutes shall be honored. If appropriate, state or local personnel 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 INS/OIA will coordinate with the FDLE/EI to provide appropriate notification to complainants with regard to the resolution of a complaint.

(End)

APPENDIX C

PUBLIC INFORMATION POINTS OF CONTACT

For the INS:

Joseph Karpinski
Director of Congressional Relations and
Public Affairs
United States Immigration and
Naturalization Service
425 I Street NW
Washington, DC 20536

(202) 514-2648

For the FDLE:

Al Dennis
Director of Public Information
Florida Department of Law Enforcement
P.O. Box 1489
Tallahassee, Florida 32302-1489

(850) 410-7001