

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CULPEPER

MICHAEL V. McCLARY,

and

CHRISTINA STOCKTON,

Plaintiffs,

v.

SCOTT H. JENKINS, in his official
capacity as Sheriff of Culpeper County,

and

BOARD OF SUPERVISORS OF
CULPEPER COUNTY,

Defendants.

Serve:

Scott H. Jenkins
Sheriff of Culpeper County
14023 Public Safety Court
Culpeper, VA 22701

Bobbi Jo Alexis
Culpeper County Attorney
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Original

Filed in Culpeper County

Circuit Court Clerk's

Office 11-28, 20 18

SLR Deputy
Clerk

Civil Action _____

COMPLAINT

Plaintiff Michael V. McClary and Plaintiff Christina Stockton state as follows for their Complaint against Defendants Scott H. Jenkins, in his official capacity as Sheriff of Culpeper County, and the Board of Supervisors of Culpeper County:

PARTIES

1. Plaintiff **Michael V. McClary** is a citizen of Virginia and resident of Culpeper County.
2. Plaintiff **Christina Stockton** is a citizen of Virginia and resident of Culpeper County.
3. Defendant **Scott H. Jenkins** is the elected Sheriff of Culpeper County and has served in that position since 2012.
4. Sheriff Jenkins is the head of the Culpeper County Sheriff's Office.
5. All Culpeper County Sheriff Deputies are an extension of Sheriff Jenkins himself and their actions as Sheriff Deputies are actions on Sheriff Jenkins' behalf.
6. Defendant **Board of Supervisors of Culpeper County** (the "Board of Supervisors") is the governing body of Culpeper County, in which the powers and duties of Culpeper County as a body politic and corporate are vested.

7. The Board of Supervisors exercises Culpeper County's administrative and legislative duties, including the responsibility to levy taxes, review and adopt a budget, and appropriate funds.

NATURE OF THIS ACTION

8. Neither the Constitution of Virginia nor the Virginia General Assembly authorizes a sheriff or a sheriff's deputies to enforce federal civil immigration law.

9. Contrary to Virginia law, Sheriff Jenkins has and will continue to enforce federal civil immigration law, and has and will continue to direct his Sheriff Deputies to enforce federal civil immigration law on his behalf, pursuant to a 287(g) Agreement Sheriff Jenkins entered into with United States Immigration and Customs Enforcement ("ICE"), the federal agency tasked with enforcement of federal immigration law.

10. The 287(g) Agreement, issued pursuant to Section 287(g) of the federal Immigration and Nationality Act, codified at 8 U.S.C. § 1357(g), purports to authorize Sheriff Jenkins and certain Sheriff Deputies to enforce federal civil immigration law.

11. Neither the Constitution of Virginia nor the Virginia General Assembly authorizes the use of local tax revenue to pay for the enforcement of federal civil immigration law.

12. Contrary to Virginia law, Sheriff Jenkins' enforcement of federal civil immigration law under the 287(g) Agreement has and continues to be paid for by local tax revenue collected in Culpeper County.

13. Contrary to Virginia law, the Board of Supervisors has and continues to approve, authorize, and permit the use of local tax revenue collected in Culpeper County to be used to facilitate and pay for Sheriff Jenkins' enforcement of federal civil immigration law.

14. Plaintiff McClary brings this lawsuit to prohibit this unlawful use of the local tax revenue collected from him as a resident of Culpeper County.

15. Plaintiff Stockton brings this lawsuit to prohibit this unlawful use of the local tax revenue collected from her as a resident of Culpeper County.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over this lawsuit under Code §§ 8.01-184, 8.01-620, and 17.1-513.

17. Venue in this Court is proper under Code § 8.01-261 because Sheriff Jenkins and the Board of Supervisors have their official offices in Culpeper County and the actions subject to the relief requested in this lawsuit are in Culpeper County.

FACTS

I. Culpeper County local taxes are appropriated to the Sheriff's Office.

18. The Culpeper County Board of Supervisors levies various types of local taxes on Culpeper County residents, including Plaintiff McClary and Plaintiff Stockton.

19. Plaintiff McClary has previously paid, currently pays, and will continue to pay those local taxes.

20. Plaintiff Stockton has previously paid, currently pays, and will continue to pay those local taxes.

21. The Board of Supervisors collects those taxes as revenue.

22. The Board of Supervisors uses that revenue to form and fund its budget for each fiscal year.

23. The Board of Supervisors' annual budget is segregated into separate funds.

24. Local taxes, such as those levied on Plaintiff McClary and Plaintiff Stockton, are paid into the Board of Supervisors' General Fund.

25. As part of the Board of Supervisors' annual budget, the Board appropriates certain funds from the General Fund to the Culpeper County Sheriff's Office.

26. The Board of Supervisors allots money to the Sheriff's Office for three categories of use, with each category of use corresponding to the three divisions within the Sheriff's Office.

27. Those three categories of use and divisions within the Sheriff's Office are: Law Enforcement; Court Security and Transportation; and Adult Detention.

28. For each of these three divisions, the annual budget is comprised of expenditures for personnel, operating expenses, and capital allocations.

29. The Board of Supervisors also determines how much money is to be appropriated to the Sheriff's Office based on each of these categories of use.

30. The Board of Supervisors and Sheriff Jenkins determine the use and amount of funds appropriated for the Sheriff's Office by working together to determine how Sheriff Jenkins' policies and priorities should be funded.

31. The funds appropriated are then used by each division of the Sheriff's Office as authorized by Sheriff Jenkins.

II. Sheriff Jenkins informed the Board of Supervisors of his intent to enter into a 287(g) Agreement, and the Board approved of that activity.

32. On December 5, 2017, the Board of Supervisors held a meeting.

33. At that meeting, Sheriff Jenkins informed the Board of Supervisors that he intended to enter into a 287(g) Agreement with ICE, which would purportedly authorize the Sheriff's Office to enforce federal civil immigration law.

34. Virginia law does not authorize the Sheriff's Office to enforce federal civil immigration law.

35. In seeking approval from the Board of Supervisors, Sheriff Jenkins represented only that he did not foresee "an enormous cost" related to the 287(g) Agreement.

36. Sheriff Jenkins did not represent to the Board of Supervisors that there would be no costs related to the 287(g) Agreement.

37. Instead, Sheriff Jenkins represented to the Board of Supervisors that the current budget of the Sheriff's Office's would cover any costs related to the 287(g) Agreement.

38. The Sheriff's Office's current budget is comprised of funds provided by the Board of Supervisors that are sourced from Culpeper County local tax revenue.

39. Despite Sheriff Jenkins' stated intent to enter into a 287(g) Agreement—which is in violation of Virginia law—the Board of Supervisors has not restricted Sheriff Jenkins' use of any previous, current, or future appropriations to prevent him from using local tax revenue to pay for salaries, costs, and expenses related to the unlawful 287(g) Agreement.

40. The Board of Supervisors continues to approve, authorize, and permit Sheriff Jenkins' use of local tax revenue to pay for salaries, costs, and expenses related to the 287(g) Agreement.

III. Sheriff Jenkins uses local tax revenue to pay for the enforcement of federal civil immigration law.

41. On Tuesday, April 24, 2018, Sheriff Jenkins entered into a 287(g) Agreement with ICE.

42. A copy of the executed 287(g) Agreement is attached to this pleading as **Exhibit 1**.

43. The 287(g) Agreement was executed by Matthew T. Albence, Executive Associate Director of ICE's Enforcement and Removal Operations, and Sheriff Jenkins. Ex. 1 at 11.

44. The 287(g) Agreement has the purpose and effect of Culpeper County Sheriff's Office employees enforcing federal civil immigration law.

45. The stated purpose of the 287(g) Agreement is for ICE to delegate to the Sheriff's Office the federal "authority to perform certain immigration enforcement functions." Ex. 1 at 1.

46. Sheriff Jenkins intends to have six Sheriff Deputies enforce federal civil immigration law under the 287(g) Agreement, in violation of Virginia law.

47. That local enforcement of federal civil immigration law under the 287(g) Agreement is paid for and made possible by local tax revenue collected

from Culpeper County residents, including Plaintiff McClary and Plaintiff Stockton, to fund personnel, training, equipment, and other expenses.

48. **Salary and Personnel Incidentals.** The Sheriff's Office "is responsible for personnel expenses," incurred in connection with the 287(g) Agreement, "including, but not limited to, salaries and benefits, local transportation, and official issue material." Ex. 1 at 5.

49. The Sheriff's Office therefore pays for every minute that any Sheriff Deputy spends enforcing federal civil immigration law (including overtime).

50. This includes every minute that a Sheriff Deputy spends time: serving arrest warrants; detaining and transporting individuals to ICE-approved detention facilities; interrogating a detained individual; administering oaths; taking and considering evidence; preparing charging documents; processing an individual deemed appropriate for removal; or issuing immigration detainers. Ex. 1 at 17-18.

51. Each of these "authorities" have purportedly been "delegated" to the Sheriff Deputies under the 287(g) Agreement. Ex. 1 at 17-18.

52. The Sheriff's Office also pays for all costs and expenses incidental to those Sheriff Deputies' enforcement of federal civil immigration law.

53. **Training.** The Sheriff's Office is responsible for "cover[ing] the costs of all [Sheriff's Office] personnel's travel, housing, and per diem affiliated with the training required for participation in" the 287(g) Agreement. Ex. 1 at 5.

54. This training is an essential component of the Sheriff's Office enforcement of federal civil immigration law. No Sheriff Deputy can participate in the 287(g) Agreement unless he or she participates in this training.

55. Sheriff Jenkins represented to the Board of Supervisors that this training lasts four weeks.

56. The potential for reimbursement of training-related travel, housing, and per diem expenses is conditionally based on whether the training "provides a direct service" for, and is in the "best interest" of, the Federal Government. Ex. 1 at 5.

57. Full reimbursement of training-related travel, housing, and per diem expenses is not guaranteed. Reimbursement of personnel expenses, including salary and benefits, is not offered at all.

58. **Security Equipment.** The Sheriff's Office is "responsible for providing the necessary security equipment, such as handcuffs, leg restraints[,] and flexi cuffs." Ex. 1 at 6.

59. These equipment-related costs and expenses will arise during the course of the Sheriff's Office enforcement of federal civil immigration law. *See* Ex. 1 at 17-18 ("Authorized Functions").

60. **Technology Incidentals.** The Sheriff's Office is responsible for paying expenses related to the use of ICE-owned technology, including "cabling

and power upgrades” and “any installation and recurring costs associated with the [Sheriff’s Office’s phone or internet] line.” Ex. 1 at 6.

61. These costs and expenses will arise during the installation and use of the terminal allowing communication between Sheriff Deputies and ICE, which Sheriff Jenkins represented to the Board of Supervisors will be installed in the Culpeper County Jail.

62. These costs and expenses incidental to the use of ICE-owned technology will arise during the course of the Sheriff’s Office enforcement of federal civil immigration law. *See* Ex. 1 at 17-18 (“Authorized Functions”).

63. **Administrative Supplies.** The Sheriff’s Office “is responsible for providing all administrative supplies, such as paper, toner, pens, pencils, or other similar items necessary for normal office operations.” Ex. 1 at 6.

64. These administrative costs and expenses will arise during the course of the Sheriff’s Office enforcement of federal civil immigration law. *See* Ex. 1 at 17-18 (“Authorized Functions”).

65. **ICE Office.** If ICE requests it, the Sheriff’s Office “will provide at no cost to ICE, an office within participating [Sheriff’s Office] facilities from which ICE supervisory employees can work.” Ex. 1 at 6.

COUNT ONE: DECLARATORY JUDGMENT (SHERIFF JENKINS)
(For Entry into 287(g) Agreement)

66. Plaintiff McClary and Plaintiff Stockton incorporate and rely on all other factual and legal allegations, express and implied, set forth in this pleading.

67. The office of sheriff is a creation of the Virginia Constitution. *See* Va. Const. Art. 7, § 4.

68. The Office of the Sheriff of Culpeper County exists, abeyant and unfilled, by virtue of constitutional origination from the moment the General Assembly created Culpeper County.

69. Sheriff Jenkins' duties derive from the General Assembly. *See* Va. Const. Art. 7, § 4.

70. The Constitution of Virginia prohibits Sheriff Jenkins from taking any action that is not a duty prescribed by the General Assembly.

71. The General Assembly has not prescribed Sheriff Jenkins or his Sheriff Deputies the duty to enforce federal civil immigration law.

72. The General Assembly has not prescribed Sheriff Jenkins the duty to enter into a 287(g) Agreement with ICE, a federal agency, so that Sheriff Jenkins or his Sheriff Deputies can enforce federal civil immigration law.

73. Sheriff Jenkins' execution of the 287(g) Agreement is thus unconstitutional, unlawful, *ultra vires*, and void *ab initio*.

74. Plaintiff McClary and Plaintiff Stockton request this Court to enter an order declaring Sheriff Jenkins' entry into the 287(g) Agreement to be unconstitutional, unlawful, *ultra vires*, and void *ab initio*, and to enter such further relief as requested in this pleading.

**COUNT TWO: DECLARATORY JUDGMENT (SHERIFF JENKINS)
(For Use of Culpeper County Funds under 287(g) Agreement)**

75. Plaintiff McClary and Plaintiff Stockton incorporate and rely on all other factual and legal allegations, express and implied, set forth in this pleading.

76. The office of sheriff is a creation of the Virginia Constitution. *See* Va. Const. Art. 7, § 4.

77. The Office of the Sheriff of Culpeper County exists, abeyant and unfilled, by virtue of constitutional origination from the moment Culpeper County was created by the General Assembly.

78. Sheriff Jenkins' duties derive from the General Assembly. *See* Va. Const. Art. 7, § 4.

79. The Constitution of Virginia prohibits Sheriff Jenkins from taking any action that is not a duty prescribed by the General Assembly.

80. The General Assembly has not prescribed Sheriff Jenkins the duty to use local tax revenue to pay for salaries, costs, and expenses relating to the enforcement of federal civil immigration law.

81. Sheriff Jenkins has used, continues to use, and will use funds, including local tax revenue, from Culpeper County to pay for the salaries, costs, and expenses relating to the enforcement of federal civil immigration law under the 287(g) Agreement.

82. Sheriff Jenkins' use of funds from Culpeper County, including local tax revenue, in relation to the 287(g) Agreement is thus unconstitutional, unlawful, *ultra vires*, and void *ab initio*.

83. Sheriff Jenkins' use of funds from Culpeper County, including local tax revenue, in relation to the 287(g) Agreement directly and immediately harms Plaintiff McClary and Plaintiff Stockton as Culpeper residents and taxpayers.

84. Plaintiff McClary and Plaintiff Stockton request this Court to enter an order declaring Sheriff Jenkins' use of funds from Culpeper County, including local tax revenue, in relation to the 287(g) Agreement to be unconstitutional, unlawful, *ultra vires*, and void *ab initio*, and to enter such further relief as requested in this pleading.

**COUNT THREE: DECLARATORY JUDGMENT (BOARD OF SUPERVISORS)
(For Appropriation of Funds under 287(g) Agreement)**

85. Plaintiff McClary and Plaintiff Stockton incorporate and rely on all other factual and legal allegations, express and implied, set forth in this pleading.

86. The Board of Supervisors has no element of sovereignty.

87. The Board of Supervisors has no powers other than those that are clearly and unmistakably granted by the General Assembly.

88. The Board of Supervisors has only those powers that the General Assembly has expressly granted, those powers that are necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable.

89. The Board of Supervisors appropriates funds, including local tax revenue, to Sheriff Jenkins.

90. The Board of Supervisors may condition its appropriation of funds, including local tax revenue, to Sheriff Jenkins on Sheriff Jenkins' acceptance of certain restrictions on the use of the appropriated funds.

91. The General Assembly has not expressly granted the Board of Supervisors the power to appropriate funds, including local tax revenue, to any sheriff to pay for the salaries, costs, or expenses relating to the enforcement of federal civil immigration law.

92. The power to appropriate funds, including local tax revenue, to any sheriff to pay for the salaries, costs, or expenses relating to the enforcement of federal civil immigration law is not necessarily or fairly implied from those powers that the General Assembly has expressly granted to the Board of Supervisors.

93. The power to appropriate funds, including local tax revenue, to any sheriff to pay for the salaries, costs, or expenses relating to the enforcement of federal civil immigration law is not essential and indispensable.

94. The Board of Supervisors has appropriated, continues to appropriate, and will appropriate funds, including local tax revenue, to Sheriff Jenkins that will pay for the salaries, costs, or expenses relating to the enforcement of federal civil immigration law by way of the 287(g) Agreement.

95. The Board of Supervisors' appropriation of funds, including local tax revenue, to Sheriff Jenkins in relation to the 287(g) Agreement or otherwise is thus unconstitutional, unlawful, *ultra vires*, and void *ab initio*.

96. The Board of Supervisors' appropriation of funds, including local tax revenue, to Sheriff Jenkins in relation to the 287(g) Agreement directly and immediately harms Plaintiff McClary and Plaintiff Stockton as Culpeper residents and taxpayers.

97. Plaintiff McClary and Plaintiff Stockton request this Court to enter an order declaring the Board of Supervisors' appropriation of funds, including local tax revenue, to Sheriff Jenkins without any condition prohibiting the use of those funds to pay the salaries, costs, or expenses relating to the enforcement of federal civil immigration law, by way of the 287(g) Agreement or otherwise, to be

unconstitutional, unlawful, *ultra vires*, and void *ab initio*, and to enter such further relief as requested in this pleading.

PRAYER FOR RELIEF

Plaintiff McClary and Plaintiff Stockton request this Court to award the following relief:

98. Enter declaratory judgment that:

a. Sheriff Jenkins' entry into the 287(g) Agreement is unconstitutional, unlawful, *ultra vires*, and void *ab initio*;

b. Sheriff Jenkins' use of funds from Culpeper County, including local tax revenue, in relation to the 287(g) Agreement is unconstitutional, unlawful, *ultra vires*, and void *ab initio*; and/or

c. the Board of Supervisors' appropriation of funds, including local tax revenue, to Sheriff Jenkins without conditioning such funds on the basis that they not be used to pay the salaries, costs, or expenses relating to the enforcement of federal civil immigration law, by way of the 287(g) Agreement or otherwise, is unconstitutional, unlawful, *ultra vires*, and void *ab initio*.

99. Enter a temporary or preliminary injunction enjoining:

a. Sheriff Jenkins or his Sheriff Deputies from acting pursuant to the 287(g) Agreement;

b. Sheriff Jenkins from using funds from Culpeper County, including local tax revenue, to pay for salaries, costs, and expenses relating to the 287(g) Agreement; and/or

c. the Board of Supervisors from appropriating any funds, including local tax revenue, to Sheriff Jenkins and the Sheriff's Office without conditioning such funds on the basis that no appropriated funds, including local tax revenue, can pay for the salaries, costs, or expenses relating to the enforcement of federal civil immigration law by way of the 287(g) Agreement or otherwise.

100. Enter a permanent injunction enjoining:

a. Sheriff Jenkins or his Sheriff Deputies from acting pursuant to the 287(g) Agreement;

b. Sheriff Jenkins from using funds from Culpeper County, including local tax revenue, to pay for salaries, costs, and expenses relating to the 287(g) Agreement; and/or

c. the Board of Supervisors from appropriating any funds, including local tax revenue, to Sheriff Jenkins and the Sheriff's Office without conditioning such funds on the basis that no appropriated funds, including local tax revenue, can pay for the salaries, costs, or expenses

relating to the enforcement of federal civil immigration law by way of the 287(g) Agreement or otherwise.

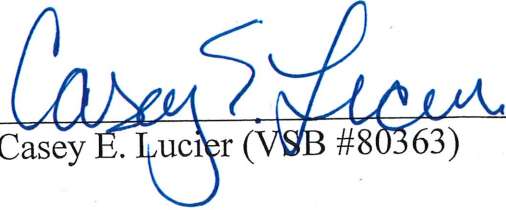
101. Retain jurisdiction over this matter for the purpose of enforcing this Court's orders;

102. Award Plaintiff McClary and Plaintiff Stockton the reasonable costs and expenses of this action;

103. Grant such other and further relief as this Court deems equitable and just under the circumstances.

Dated: November 28, 2018

Respectfully Submitted,



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Exhibit 1

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (MOA) constitutes an agreement between U.S. Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS), and the Culpeper County Sheriff's Office (CCSO), pursuant to which ICE delegates to nominated, trained, certified, and authorized CCSO personnel the authority to perform certain immigration enforcement functions as specified herein. It is the intent of the parties that these delegated authorities will enable the CCSO to identify and process for removal, under ICE supervision, aliens in CCSO jail/correctional facilities who fall within ICE's civil immigration enforcement priorities. The CCSO and ICE enter into this MOA in good faith and agree to abide by the terms and conditions contained herein.

I. PURPOSE

The purpose of this collaboration is to enhance the safety and security of communities by focusing resources on identifying and processing for removal aliens who fall into ICE's civil immigration enforcement priorities. This MOA sets forth the terms and conditions pursuant to which selected CCSO personnel (participating CCSO personnel) will be nominated, trained, and approved by ICE to perform certain functions of an immigration officer within the CCSO's jail/correctional facilities. Nothing contained herein shall otherwise limit the jurisdiction and powers normally possessed by participating CCSO personnel as members of the CCSO. However, the exercise of the immigration enforcement authority delegated under this MOA to participating CCSO personnel shall occur only as provided in this MOA.

II. AUTHORITY

Section 287(g) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1357(g) (1996), as amended by the Homeland Security Act of 2002, Public Law 107-296, authorizes the Secretary of DHS 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. Such authority has been delegated by the Secretary to ICE, and this MOA constitutes such a written agreement.

III. POLICY

This MOA sets forth the following: 1) the functions of an immigration officer that DHS is authorizing the participating CCSO personnel to perform; 2) the duration of the authority conveyed; 3) the supervisory requirements, including the requirement that participating CCSO personnel are subject to ICE supervision while performing immigration-related duties pursuant to this MOA; and 4) program information or data that the CCSO is required to collect as part of the operation of the program. For the purposes of this MOA, ICE officers will provide supervision for participating CCSO personnel only as to immigration enforcement functions as authorized in this MOA. The CCSO retains supervision of all other aspects of the employment and performance of duties by participating CCSO personnel.

ICE retains sole discretion in determining how it will manage its detention resources and

advance its mission. ICE will prioritize the detention of aliens in conformity with its civil immigration enforcement priorities. ICE reserves the right to detain aliens to the extent provided by law.

The CCSO is expected to pursue to completion all criminal charges that caused the alien to be taken into custody and over which the CCSO has jurisdiction. Subject to its civil immigration enforcement priorities, ICE will assume custody of an alien for purposes of removal, only after said individual has been released from CCSO custody. The CCSO agrees to use its 287(g) authority in a manner consistent with ICE's civil immigration enforcement priorities.

IV. DESIGNATION OF AUTHORIZED FUNCTIONS

Approved participating CCSO personnel will be authorized to perform only those immigration officer functions that are set forth in the Standard Operating Procedures (SOP) in Appendix D to this MOA.

V. OPTIONAL INTER-GOVERNMENTAL SERVICE AGREEMENTS

ICE and the CCSO may enter into an Inter-Governmental Service Agreement (IGSA) pursuant to which the CCSO will continue to detain, for a reimbursable fee, aliens for immigration purposes, if ICE so requests, following completion of the alien's criminal incarceration. If ICE and the CCSO enter into an IGSA, the CCSO must meet applicable detention standards.

In addition to detention services, ICE and the CCSO may enter into an IGSA provide for transportation services relating to incarcerated aliens. Under a transportation IGSA, the CCSO will transport incarcerated aliens who have completed their criminal sentences to a facility or location designated by ICE, if ICE makes such a request. Reimbursement to the CCSO will occur only when the CCSO obtained prior ICE approval for the transportation. ICE will not reimburse if the CCSO did not obtain prior approval from ICE.

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

VI. NOMINATION OF PERSONNEL

The CCSO will nominate candidates for ICE training and approval under this MOA. All candidates must be United States citizens. All CCSO candidates shall have knowledge of and have enforced laws and regulations pertinent to their law enforcement activities and their jurisdictions. All CCSO candidates shall have experience supervising inmates, have been trained on maintaining the security of CCSO facilities, and have enforced rules and regulations governing inmate accountability and conduct. Candidates must also show an ability to meet and deal with people of differing backgrounds and behaviors.

The CCSO is responsible for conducting a criminal background check covering the last five

years for all nominated candidates. Upon request, the CCSO will provide all related information and materials it collected, referenced, or considered during the criminal background check for nominated candidates to ICE.

In addition to the CCSO background check, ICE will conduct an independent background check for each candidate. This background check requires all candidates to complete a background questionnaire. The questionnaire requires, but is not limited to, the submission of fingerprints, a personal history questionnaire, and the candidate's disciplinary history (including allegations of excessive force or discriminatory action). ICE reserves the right to query any and all national and international law enforcement databases to evaluate a candidate's suitability to exercise immigration enforcement functions under this MOA. Upon request by ICE, the CCSO will provide continuous access to disciplinary records of all candidates along with a written privacy waiver signed by the candidate allowing ICE to have continuous access to his or her disciplinary records.

The CCSO agrees to use due diligence to screen individuals nominated for training and agrees that individuals who successfully complete the training under this MOA will perform immigration officer functions authorized under section 287(g) of the INA for a minimum of two years. If CCSO personnel under consideration are in a collective bargaining unit, the CCSO must, prior to the execution of the MOA, have an agreement with the exclusive representative that allows the designated officers to remain in their position for a minimum of two years. This two-year requirement may be waived solely at the discretion of ICE for good cause in situations that involve, among other things, imminent promotion, officer career development, and disciplinary actions. Failure by the CCSO to fulfill this commitment could jeopardize the terms of this MOA.

All CCSO candidates must be approved by ICE and must be able to qualify for access to the appropriate DHS and ICE databases/systems and associated applications. Should a candidate not be approved, a qualified substitute candidate may be submitted. Any future expansion in the number of participating CCSO personnel or scheduling of additional training classes is subject to all the requirements of this MOA and the accompanying SOP.

VII. TRAINING OF PERSONNEL

Before participating CCSO personnel receive authorization to perform immigration officer functions under this MOA, they must successfully complete the Immigration Authority Delegation Program (IADP) training provided by ICE. IADP training will be taught by ICE instructors and tailored to the immigration enforcement functions to be performed. Each CCSO nominee must pass each IADP examination with a minimum score of 70 percent to receive certification. If an CCSO nominee fails to attain a 70-percent rating on an examination, the CCSO nominee will have 1 opportunity to review the testing material and re-take a similar examination. During the entirety of the IADP, the CCSO nominee will be offered a maximum of 1 remedial examination. Failure to achieve a 70-percent rating on any 2 examinations (inclusive of any remedial examination), will result in the disqualification of the CCSO nominee and discharge of the nominee from the IADP.

Training will include, among other topics: (i) discussion of the terms and limitations of this MOA; (ii) the scope of delegated immigration officer authority; (iii) relevant immigration laws; (iv) ICE's civil immigration enforcement priorities, including prosecutorial discretion; (v); civil rights laws; (vi) the U.S. Department of Justice "Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity," dated December 2014, and related DHS guidance; (vii) public outreach and complaint procedures; (viii) liability issues; (ix) cross-cultural issues; and (x) obligations related to consular notification concerning the arrest or detention of foreign nationals.

Participating CCSO personnel will also be required to complete refresher training, Immigration Authority Delegation Refresher Program (IADRP), every two years, and any additional training required by ICE on relevant administrative, legal, and operational issues related to the performance of immigration officer functions.

ICE will review the training requirements annually and reserves the right to amend them.

Trained CCSO personnel will receive a DHS email account and access to the necessary DHS systems and associated applications. The use of the information technology (IT) infrastructure and the DHS/ICE IT security policies are defined in the Interconnection Security Agreement (ISA). The ISA is the agreement between ICE's Chief Information Security Officer (CISO) and the CCSO's Designated Accreditation Authority (DAA). The CCSO agrees that each of its sites using an ICE-provided network access or equipment will sign the ISA, which defines the IT policies and rules of behavior for each user granted access to the DHS network and applications. Failure to adhere to the terms of the ISA could result in the loss of all user privileges.

VIII. CERTIFICATION AND AUTHORIZATION

Upon successful completion of IADP training, CCSO personnel shall be deemed "certified" under this MOA.

On a yearly basis, ICE will certify in writing the names of those CCSO personnel who successfully complete training and pass all required test(s). Upon receipt of the certification, the ICE Field Office Director (FOD) in the Washington Field Office will provide the participating CCSO personnel a signed authorization letter allowing the named CCSO personnel 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 letter to the CCSO. Only those certified CCSO personnel who receive authorization letters issued by ICE and whose immigration enforcement efforts are overseen by an ICE supervisor may conduct immigration officer functions described in this MOA.

Along with the authorization letter, ICE will issue the certified CCSO personnel official immigration officer credentials. Upon receipt of the credentials, CCSO personnel will provide ICE a signed receipt of the credentials on the ICE Record of Receipt – Property Issued to Employee (Form G-570). Participating CCSO personnel shall carry their ICE-issued credentials while performing immigration officer functions under this MOA. Such credentials provided by

ICE shall remain the property of ICE and shall be returned to ICE upon termination of this agreement, when a participating CCSO employee ceases his/her participation, or when deemed necessary by the ICE FOD in the Washington Field Office.

Authorization of participating CCSO personnel to act pursuant to this MOA may be withdrawn at any time and for any reason by ICE and must be memorialized in a written notice of withdrawal identifying an effective date of withdrawal and the personnel to whom the withdrawal pertains. Such withdrawal may be effectuated immediately upon notice to the CCSO. The CCSO and the ICE FOD in the Washington Field Office will be responsible for notification of the appropriate personnel in their respective agencies. The termination of this MOA shall constitute immediate revocation of all immigration enforcement authorizations delegated hereunder.

The CCSO will notify ICE within 48 hours of when participating CCSO personnel cease their participation in the 287(g) program, so that appropriate action can be taken in accordance with ICE policies, including inventorying and retrieval of credentials and termination of user account access to the appropriate DHS and ICE databases/systems and associated applications.

IX. COSTS AND EXPENDITURES

The CCSO is responsible for personnel expenses, including, but not limited to, salaries and benefits, local transportation, and official issue material. The CCSO is responsible for the salaries and benefits, including overtime, of all of its personnel being trained or performing duties under this MOA and of those personnel performing the regular functions of the participating CCSO personnel while they are receiving training. The CCSO will cover the costs of all CCSO personnel's travel, housing, and per diem affiliated with the training required for participation in this MOA. ICE is responsible for the salaries and benefits of all of its personnel, including instructors and supervisors.

If ICE determines the training provides a direct service for the Government and it is in the best interest of the Government, the Government may issue travel orders to selected personnel and reimburse travel, housing, and per diem expenses only. The CCSO remains responsible for paying salaries and benefits of the selected personnel.

ICE will provide instructors and training materials.

Subject to the availability of funds, ICE will be responsible for the purchase, installation, and maintenance of technology (computer/Integrated Automated Fingerprint Identification System/Photo and similar hardware/software) necessary to support the immigration enforcement functions of participating CCSO personnel at each CCSO facility with an active 287(g) program. Only participating CCSO personnel certified by ICE may use this equipment. ICE will also provide the necessary technological support and software updates for use by participating CCSO personnel to accomplish the delegated functions. Such hardware, software, and other technology purchased or provided by ICE shall remain the property of ICE and shall be returned to ICE upon termination of this agreement, or when deemed necessary by the ICE FOD in the Washington Field Office.

The CCSO is responsible for covering all expenses at the CCSO facility regarding cabling and power upgrades. If the connectivity solution for the CCSO is determined to include use of the CCSO's own communication lines - (phone, DSL, site owned T-1/T-3, etc.), the CCSO will be responsible for covering any installation and recurring costs associated with the CCSO line.

The CCSO is responsible for providing all administrative supplies, such as paper, toner, pens, pencils, or other similar items necessary for normal office operations. The CCSO is also responsible for providing the necessary security equipment, such as handcuffs, leg restraints and flexi cuffs, etc.

Also, if requested by ICE, the CCSO will provide at no cost to ICE, an office within participating CCSO facilities from which ICE supervisory employees can work.

X. ICE SUPERVISION

Immigration enforcement activities conducted by the participating CCSO personnel will be supervised and directed by ICE supervisory officers. Participating CCSO personnel are not authorized to perform immigration officer functions except when working under the supervision or guidance of ICE. Additional supervisory and administrative responsibilities are specified in the SOP in Appendix D.

The actions of participating CCSO personnel will be reviewed by 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 individual training or guidance.

For purposes of this MOA, ICE officers will provide supervision of participating CCSO personnel only as to immigration enforcement functions conducted in conjunction to this authority. The CCSO retains supervision of all other aspects of the employment of and performance of duties by participating CCSO personnel.

In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating CCSO personnel in exercising these delegated authorities under this MOA shall be DHS and ICE policies and procedures. ICE is responsible for providing the CCSO with the applicable DHS and ICE policies.

However, when engaged in immigration enforcement activities, no participating CCSO personnel will be expected or required to violate or otherwise fail to maintain the CCSO's rules, standards, or policies, or be required to fail to abide by restrictions or limitations as may otherwise be imposed by law.

If a conflict arises between an order or direction of an ICE supervisory officer or a DHS or ICE policy and the CCSO's rules, standards, or policies, the conflict shall be promptly reported to the points of contact listed in Appendix A who shall attempt to resolve the conflict.

XI. REPORTING REQUIREMENTS

The CCSO will provide statistical or aggregated arrest data to ICE, as requested by ICE. The CCSO will also provide specific tracking data and/or any information, documents, or evidence related to the circumstances of a particular arrest upon request. ICE may use this data to compare and verify ICE's own data, and to fulfill ICE's statistical reporting requirements, or to assess the progress and success of the CCSO's 287(g) program.

XII. LIABILITY AND RESPONSIBILITY

Except as otherwise noted in this MOA or allowed by Federal law, and to the extent required by 8 U.S.C. § 1357(g)(7) and (8), the CCSO will be responsible and bear the costs of participating CCSO personnel with regard to their property or personal expenses incurred by reason of death, injury, or incidents giving rise to liability.

Participating CCSO personnel will be treated as Federal employees only for purposes of the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b)(1), 2671-2680, and worker's compensation claims, 5 U.S.C. § 8101 et seq., when performing a function on behalf of ICE as authorized by this MOA. *See* 8 U.S.C. § 1357(g)(7); 28 U.S.C. § 2671. In addition, it is the understanding of the parties to this MOA that participating CCSO personnel will enjoy the same defenses and immunities from personal liability for their in-scope acts that are available to ICE officers based on actions conducted in compliance with this MOA. *See* 8 U.S.C. § 1357(g)(8).

Participating CCSO personnel named as defendants in litigation arising from activities carried out under this MOA may request representation by the U.S. Department of Justice. *See* 28 C.F.R. § 50.15. Absent exceptional circumstances, such requests must be made in writing. CCSO personnel who wish to submit a request for representation shall notify the local ICE Office of the Chief Counsel at 1901 South Bell Street, Arlington, Virginia 22202. The Office of the Chief Counsel in turn will notify the ICE Headquarters Office of the Principal Legal Advisor (OPLA), which will assist CCSO personnel with the request for representation, including the appropriate forms and instructions. Unless OPLA concludes that representation clearly is unwarranted, it will forward the request for representation, any supporting documentation, and an advisory statement opining whether: 1) the requesting individual was acting within the scope of his/her authority under 8 U.S.C. § 1357(g); and, 2) such representation would be in the interest of the United States, to the Director of the Constitutional and Specialized Tort Litigation Section, Civil Division, Department of Justice (DOJ). Representation is granted at the discretion of DOJ; it is not an entitlement. Subject to DHS Policy, ICE may defend or indemnify acts of intentional misconduct on the part of the participating CCSO personnel only to the extent authorized by law.

The CCSO agrees to cooperate with any Federal investigation related to this MOA to the full extent of its available powers, including providing access to appropriate databases, personnel, individuals in custody and documents. Failure to do so may result in the termination of this MOA. Failure of any participating CCSO employee to cooperate in any Federal investigation related to this MOA may result in revocation of such individual's authority provided under this MOA. The CCSO agrees to cooperate with Federal personnel conducting reviews to ensure compliance with the terms of this MOA and to provide access to appropriate databases, personnel, and documents necessary to complete such compliance review. It is understood that

information provided by any CCSO 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), and its progeny.

As the activities of participating CCSO personnel under this MOA are undertaken under Federal authority, the participating CCSO 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 govern the disclosure of potential impeachment information about possible witnesses or affiants in a criminal case or investigation.

The CCSO and ICE are each responsible for compliance with the Privacy Act of 1974, 5 U.S.C. §552a, DHS Privacy Act regulations, 6 C.F.R. §§ 5.20-5.36, as applicable, and related system of records notices with regard to data collection and use of information under this MOA.

XIII. COMPLAINT PROCEDURES

The complaint reporting procedure for allegations of misconduct by participating CCSO personnel, including activities undertaken under the authority of this MOA, is included in Appendix B.

XIV. CIVIL RIGHTS STANDARDS

Participating CCSO personnel are bound by all Federal civil rights laws, regulations, and guidance relating to non-discrimination, including the U.S. Department of Justice "Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity," dated December 2014," and Title VI of the Civil Rights Act of 1964, as amended, 42. U.S.C. 2000 et seq., which prohibits discrimination based upon race, color, or national origin (including limited English proficiency) in any program or activity receiving Federal financial assistance.

XV. INTERPRETATION SERVICES

Participating CCSO personnel will provide an opportunity for subjects with limited English language proficiency to request an interpreter. Qualified foreign language interpreters will be provided by the CCSO, as needed.

The CCSO will maintain a list of qualified interpreters or companies it contracts with to provide such interpreters. Participating law enforcement personnel will be instructed on the proper administrative procedures to follow to obtain the services of an interpreter. A qualified interpreter, which may include CCSO personnel, means an interpreter who can interpret effectively, accurately, and impartially, using any specialized vocabulary. If an interpreter is used when a designated officer is performing functions under this MOA, the interpreter must be identified, by name, in records.

XVI. COMMUNICATION

The ICE FOD in the Washington Field Office, and the CCSO shall meet at least annually, and as needed, to review and assess the immigration enforcement activities conducted by the participating CCSO personnel, and to ensure compliance with the terms of this MOA. When necessary, ICE and the CCSO may limit the participation of these meetings in regards to non-law enforcement personnel. The attendees will meet in the Washington Field Office at locations to be agreed upon by the parties, or via teleconference. The 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 immigration enforcement activity in the Washington Field Office. An initial review meeting will be held no later than nine months after certification of the initial class of participating CCSO personnel under Section VII, above.

XVII. COMMUNITY OUTREACH

The CCSO will, as necessary, engage in Steering Committee meetings and may engage in other community outreach with individuals and organizations expressing an interest in this MOA. ICE may participate in such outreach upon the CCSO's request. Nothing in this MOA shall limit ICE's own community outreach efforts.

XVIII. RELEASE OF INFORMATION TO THE MEDIA AND OTHER THIRD PARTIES

The CCSO 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. It is the practice of ICE to provide a copy of this MOA, only after it has been signed, to requesting media outlets; the CCSO is authorized to do the same.

The CCSO hereby agrees to coordinate with ICE prior to releasing any information relating to, or exchanged under, this MOA. For releases of information to the media, the CCSO must coordinate in advance of release with the ICE Office of Public Affairs, which will consult the ICE Privacy Office for approval prior to any release. The points of contact for ICE and the CCSO for this purpose are identified in Appendix C. For releases of information to all other parties, the CCSO must coordinate in advance of release with the applicable ICE Field Office.

Information obtained or developed as a result of this MOA, including any documents created by the CCSO that contain information developed or obtained as a result of this MOA, is under the control of ICE and shall not be disclosed unless: 1) permitted by applicable laws, regulations, or executive orders; and 2) the CCSO has coordinated in advance of release with (a) the ICE Office of Public Affairs, which will consult the ICE Privacy Office for approval, prior to any release to the media, or (b) an ICE supervisor prior to releases to all other parties.

CCSO questions regarding the applicability of this section to requests for the release of information shall be directed to an ICE supervisor.

Appendix B to this MOA describes the complaint procedures available to members of the public

regarding actions taken by participating CCSO personnel pursuant to this agreement.

XIX. MODIFICATIONS TO THIS MOA

Modifications to this MOA must be proposed in writing and approved and signed by both parties. Modification to Appendix D shall be done in accordance with the procedures outlined in the SOP.

XX. POINTS OF CONTACT

ICE and the CCSO points of contact for purposes of this MOA are identified in Appendix A. Points of contact (POC) can be updated at any time by providing a revised Appendix A to the other party to this MOA.

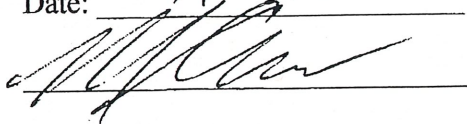
XXI. DURATION AND TERMINATION OF THIS MOA

This MOA will remain in effect from the date of signing to June 30, 2019 unless terminated earlier by either party. Prior to the expiration of the effective period, ICE and the CCSO shall review the MOA for consideration whether to modify, extend, or permit the MOA to lapse. During the MOA's effective period, either party, upon written notice to the other party, may terminate or suspend the MOA at any time. A termination or suspension notice by ICE shall be delivered personally or by certified or registered mail to the CCSO and termination or suspension shall take effect immediately upon receipt of such notice. Notice of termination or suspension by the CCSO shall be given to the ICE FOD in the Washington Field Office and termination or suspension shall take effect immediately upon receipt of such notice. Upon a subsequent demonstration of need, all costs to reinstate access to such authorities and/or program services will be incurred by the CCSO.

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.

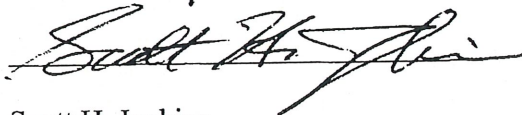
By signing this MOA, each party represents it is fully authorized to enter into this MOA, accepts the terms, responsibilities, obligations, and limitations of this MOA, and agrees to be bound thereto to the fullest extent allowed by law.

Date: 4/24/19



Matthew T. Albence
Executive Associate Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
Department of Homeland Security

Date: 4/24/19



Scott H. Jenkins
Sheriff
Culpeper County Sheriff's Office

APPENDIX A

POINTS OF CONTACT

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

For the CCSO:

Scott H. Jenkins
Sheriff
Culpeper County Sheriff's Office
14023 Public Safety Court
Culpeper, Virginia 22701
540-727-7520

For ICE Enforcement and Removal Operations (ERO):

Russell Hott
Field Office Director
2675 Prosperity Avenue, Suite 300
Fairfax, Virginia 20598
703-285-6221

APPENDIX B

COMPLAINT PROCEDURE

This Memorandum of Agreement (MOA) is between the U.S. Department of Homeland Security's U.S. Immigration and Customs Enforcement (ICE) and the Culpeper County Sheriff's Office, (CCSO), pursuant to which selected CCSO personnel are authorized to perform immigration enforcement duties in specific situations under Federal authority. As such, the training, supervision, and performance of participating CCSO personnel pursuant to the MOA, as well as the protections for U.S. citizens' and aliens' civil and constitutional rights, are to be monitored. Part of that monitoring will be accomplished through these complaint reporting and resolution procedures, which the parties to the MOA have agreed to follow.

The MOA sets forth the process for designation, training, certification, and authorization of certain CCSO personnel to perform certain immigration enforcement functions specified herein. Complaints filed against those personnel in the course of their non-immigration duties will remain the domain of the CCSO and be handled in accordance with the CCSO's applicable rules, policies, and procedures.

If any participating CCSO personnel are the subject of a complaint or allegation involving the violation of the terms of this MOA or a complaint or allegation of any sort that may result in that individual receiving professional discipline or becoming the subject of a criminal investigation or civil lawsuit, the CCSO shall, to the extent allowed by State law, notify ICE within 48 hours of the existence and nature of the complaint or allegation. The results of any internal investigation or inquiry connected to the complaint or allegation and the resolution of the complaint shall also be promptly reported to ICE. The ICE notifications must be made locally to the ICE FOD in the Washington Field Office and to the ICE Office of Professional Responsibility (OPR) via the Joint Intake Center (JIC) at JointIntake@cbp.dhs.gov. Complaints regarding the exercise of immigration enforcement authority by participating CCSO personnel shall be handled as described below.

The CCSO will also handle complaints filed against CCSO personnel who are not designated and certified pursuant to this MOA but are acting in immigration functions in violation of this MOA. Further, any such complaints regarding non-designated CCSO personnel must be forwarded to the JIC.

In order to simplify the process for the public, complaints against participating CCSO personnel relating to their immigration enforcement can be made according to the procedures outlined below.

1. Complaint and Allegation Reporting Procedures

Complaint reporting procedures shall be disseminated by the CCSO within facilities under its jurisdiction (in English and other languages as appropriate) in order to ensure that all individuals are aware of the availability of such procedures. Such material must include up-to-date contact

information necessary to file the complaint.

Complaints will be accepted from any source (e.g., ICE, CCSO, participating CCSO personnel, inmates, and the public). ICE will immediately forward a copy of the complaint to the DHS Office for Civil Rights and Civil Liberties (CRCL).

Complaints can be reported to Federal authorities as follows:

- A. Telephonically to the DHS Office of the Inspector General (DHS OIG) at the toll free number 1-800-323-8603, or
- B. Telephonically to the ICE OPR at the Joint Intake Center (JIC) in Washington, D.C., at the toll-free number 1-877-246-8253, email JointIntake@cbp.dhs.gov, or
- C. Via mail as follows:
Department of Homeland Security
U.S. Immigration and Customs Enforcement
Office of Professional Responsibility
P.O. Box 14475
Pennsylvania Avenue NW
Washington D.C. 20044

2. Review of Complaints

All complaints or allegations (written or oral) reported to the CCSO directly that involve CCSO personnel with ICE delegated authority will be reported to ICE OPR via the JIC. ICE OPR will verify participating personnel status under the MOA with the assistance of the ICE Headquarters. Complaints received by any ICE entity will be reported directly to ICE OPR as per existing ICE policies and procedures.

ICE OPR, as appropriate, will make an initial determination regarding ICE investigative jurisdiction and refer the complaint to the appropriate ICE office for action as soon as possible, given the nature of the complaint.

Complaints reported directly to ICE OPR will be shared with the CCSO's Internal Investigations Unit when the complaint involves CCSO personnel. Both offices will then coordinate appropriate investigative jurisdiction, which may include initiation of a joint investigation to resolve the issue(s).

3. Complaint and Allegations Resolution Procedures

Upon receipt of any complaint or allegation, ICE OPR will undertake a complete review of each complaint in accordance with existing ICE allegation criteria and reporting requirements. As stated above, ICE OPR will adhere to the reporting requirements as stated above and as they relate to the DHS OIG and CRCL and/or the DOJ Civil Rights Division. Complaints will be

resolved using the existing procedures, supplemented as follows:

A. Referral of Complaints or Allegations to the CCSO's Internal Investigations Unit.

The ICE OPR will refer complaints, as appropriate, involving CCSO personnel to the CCSO's Internal Investigations Unit for resolution. The facility commander will inform ICE OPR of the disposition and resolution of any complaints or allegations against CCSO's participating officers.

B. Interim Action Pending Complaint Resolution

When participating CCSO personnel are under investigation for any reason that could lead to disciplinary action, demotion, or dismissal, or are alleged to have violated the terms of this MOA, ICE may suspend or revoke an individual's immigration enforcement authority and have that individual removed from participation in the activities covered under the MOA.

C. Time Parameters for Resolution of Complaints or Allegations

It is expected that any complaint received will be resolved within 90 days of receipt. However, this will depend upon the nature and complexity of the substance of the complaint itself.

D. Notification of Resolution of a Complaint or Allegation

ICE OPR will coordinate with the CCSO's Internal Investigations Unit to ensure notification as appropriate to the JIC, the subject(s) of a complaint, and the person filing the complaint regarding the resolution of the complaint.

These Complaint Reporting and Allegation Procedures are ICE's internal policy and may be supplemented or modified by ICE unilaterally. ICE will provide CCSO with written copies of any such supplements or modifications. These Complaint Reporting and Allegation Procedures apply to ICE and do not restrict or apply to other investigative organizations within the federal government.

APPENDIX C

PUBLIC INFORMATION POINTS OF CONTACT

Pursuant to Section XVIII of this MOA, the signatories agree to coordinate appropriate release of information to the media, provided the release has been previously approved by the ICE Privacy Officer, regarding actions taken under this MOA before any information is released. The points of contact for coordinating such activities are:

For the CCSO:

LEA PUBLIC AFFAIRS OFFICER (hit ENTER for new line)

For ICE:

Office of Public Affairs
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
Washington, DC 20536
202-732-4242
icemedia@ice.dhs.gov

APPENDIX D

STANDARD OPERATING PROCEDURE (SOP)

The purpose of this appendix is to establish standard, uniform procedures for the implementation and oversight of the 287(g) delegation of authority program within the FOD area of responsibility. This appendix can be modified only in writing and by mutual acceptance of ICE and the CCSO.

Pursuant to this MOA, the CCSO has been delegated authorities under the Jail Enforcement Officer (JEO) model as outlined below. A 287(g) JEO model is designed to identify and process aliens amenable for removal within the CCSO's jail/correctional facilities pursuant to ICE's civil immigration enforcement priorities

Prioritization:

ICE retains sole discretion in determining how it will manage its limited resources and meet its mission requirements. To ensure resources are managed effectively, ICE requires the CCSO to also manage its resources dedicated to 287(g) authority under the MOA. To that end, the CCSO shall follow ICE's civil immigration enforcement priorities.

Authorized Functions:

Participating CCSO personnel performing immigration-related functions pursuant to this MOA will be CCSO officers assigned to detention operations supported by ICE. Those participating CCSO personnel will exercise their immigration-related authorities only during the course of their normal duties while assigned to CCSO jail/correctional facilities. Participating CCSO personnel will identify and process for removal aliens in CCSO jail/correctional facilities who fall within ICE's civil immigration enforcement priorities .

Participating CCSO personnel are delegated only those authorities listed below:

- The power and authority to interrogate any person detained in the participating law enforcement agency's detention center who the officer believes to be an alien about his or her right to be or remain in the United States, 8 U.S.C. § 1357(a)(1) and 8 C.F.R. § 287.5(a)(1), and to process for immigration violations any removable alien or those aliens who have been arrested for violating a Federal, State, or local offense;
- The power and authority to serve warrants of arrest for immigration violations pursuant to 8 U.S.C. § 1357(a) and 8 C.F.R. § 287.5(e)(3);
- The power and authority to administer oaths and to take and consider evidence, 8 U.S.C § 1357(b) and 8 C.F.R. § 287.5(a)(2), to complete required alien processing, including fingerprinting, photographing, and interviewing of aliens, as well as the preparation of affidavits and the taking of sworn statements for ICE supervisory review;

- The power and authority to prepare charging documents, 8 U.S.C. §§ 1225(b)(1), 1228, 1229, and 1231(a)(5); 8 C.F.R. §§ 235.3, 238.1, 239.1, and 241.8, including the preparation of a Notice to Appear (NTA) or other charging document, as appropriate, for the signature of an ICE officer;
- The power and authority to issue immigration detainers, 8 U.S.C. §§ 1226 and 1357, and 8 C.F.R. § 287.7, and I-213, Record of Deportable/Inadmissible Alien, for processing aliens; and
- The power and authority to detain and transport, 8 U.S.C. § 1357(g)(1) and 8 C.F.R. § 287.5(c)(6), arrested aliens subject to removal to ICE-approved detention facilities.

As previously noted in this Appendix, ICE requires the CCSO to follow ICE's civil immigration enforcement priorities.

Additional Supervisory and Administrative Responsibilities:

Immigration enforcement activities conducted by the participating CCSO personnel will be supervised and directed by ICE supervisory officers. Participating CCSO personnel are not authorized to perform immigration officer functions except when working under the supervision or guidance of ICE. Additional supervisory and administrative responsibilities for each entity include, but are not limited to:

When issuing any immigration detainer, participating CCSO personnel must follow applicable DHS and ICE policies, and must notify the ICE supervisor of any immigration detainer issued under the authority conferred by the MOA within 24 hours.

The CCSO shall coordinate transportation of detainees processed under the authority conferred by the MOA in a timely manner, in accordance with the MOA and/or IGSA.

All alien processing in applicable ICE databases/systems and associated applications must be completed in accordance with established ICE policies and guidance.

The CCSO is responsible for ensuring proper record checks have been completed, obtaining the necessary court/conviction documents, and ensuring that the alien is served with the appropriate charging documents.

The CCSO must report all encounters with asserted or suspected claims of U.S. citizenship to the ICE FOD in the **Washington Field Office** through their chain of command within one hour of the claim. The FOD shall make the appropriate notification to ERO headquarters.

On a regular basis, the ICE supervisors are responsible for conducting an audit of the processing entries and records made by the CCSO's officers. Upon review and auditing of the entries and records, if errors are found, the ICE supervisor will communicate those errors in a timely manner to the responsible official for the CCSO and ensure that steps are taken to correct, modify, or prevent the recurrence of errors that are discovered.

Administrative files (A-files) are Federal records, subject to the Federal Records Act and applicable Federal confidentiality statutes. It follows that the utilization and handling of the A-files must be consistent with applicable laws and DHS and ICE policy. The ICE supervisor is responsible for requesting A-files and reviewing them for completeness. A-files can be maintained at an CCSO facility as long as there are ICE personnel assigned to that facility and the personnel have a work area where documents can be adequately secured and stored by ICE personnel. Representatives from DHS must be permitted access to the facility where ICE records are maintained.