

APPENDIX A

Major Cities Chiefs
Immigration Committee
Recommendations for
Enforcement of Immigration Laws
By Local Police Agencies

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M.C.C. NINE (9) POINT POSITION **STATEMENT**

ENFORCEMENT OF IMMIGRATION LAWS BY LOCAL POLICE AGENCIES

A. STATEMENT OF ISSUE

Illegal immigration is a problem that faces our nation and society as a whole and one, which must be dealt with at the national level. It is absolutely critical that our country develop a consistent unified national plan to deal with immigration and this plan must include the critical component of securing our borders to prevent illegal entry into the United States.

Since the horrendous attacks of September 11, 2001, local law enforcement has been called upon to do its part in protecting the nation from future terrorist attacks. The response of local law enforcement to the call to protect the homeland has been tremendous. Today, local police agencies stand as the first line of defense here at home to prevent future attacks. Local law enforcement's unending efforts include providing additional training and equipment to officers, increasing communication and coordination with federal agencies, gathering, assessing and sharing intelligence, modifying patrol methods and increasing security for potential targets such as power plants, airports, monuments, ports and other critical facilities and infrastructure. Much of these efforts have been at a high cost to local budgets and resources.

The federal government and others have also called upon local police agencies to become involved in the enforcement of federal immigration laws as part of the effort to protect the nation. This issue has been a topic of great debate in the law enforcement community since September 11. The call for local enforcement of federal immigration laws has become more prominent during the debate over proposed immigration reform at the national level.

Major city police departments have a long undeniable history of working with federal law enforcement agencies to address crime in the United States whether committed by citizens, visitors, and/or illegal immigrants. Local police agencies have not turned a blind eye to crimes related to illegal immigration. They have and continue to work daily with federal agencies whenever possible and to the extent allowable under state criminal law enforcement authority to address crimes such as human trafficking and gang violence which have a nexus with illegal immigration.

How local agencies respond to the call to enforce immigration laws could fundamentally change the way they police and serve their communities. Local enforcement of federal immigration laws raises many daunting and complex legal, logistical and resource issues for local agencies and the diverse communities they serve. Some in local law enforcement would embrace

immigration enforcement as a means of addressing the violation of law represented by illegal immigration across our borders. Many others recognize the obstacles, pitfalls, dangers and negative consequences to local policing that would be caused by immigration enforcement at the local level.

It is important for Major Cities Chiefs [M.C.C.] as a leader and representative of the local law enforcement community develop consensus on this important subject. The purpose of this position statement is to evaluate and address the impact and potential consequences of local enforcement of federal immigration laws and highlight steps, which if taken might allow local agencies to become involved in immigration enforcement. It is hoped that this statement will help to draw attention to the concerns of local law enforcement and provide a basis upon which to discuss and shape any future national policy on this issue. In this regard it is absolutely critical that M.C.C. be involved in all phases of this debate from developing this official position statement to demanding input and involvement in the development of any national initiatives.

B. OVERVIEW OF IMMIGRATION AND IMMIGRANT STATUS

The federal government has the clear authority and responsibility over immigration and the enforcement of immigration laws. With this authority, the federal government has enacted laws, such as the Immigration and Naturalization Act (INA), that regulate a person's entry into the United States, his or her ability to remain in the country, and numerous other aspects of immigration. The federal government has given federal agencies such as Immigration and Customs Enforcement [I.C.E.] the specific authority to investigate a person's immigration status and deport individuals who have no legal status or authority to be in the United States.

Under the current immigration laws there exists various immigration status classifications. The immigration status of any particular person can vary greatly. The most common status classifications include the following:

- 1) **Legal Immigrants** are citizens of other countries who have been granted a visa that allows them to live and work permanently in the United States and to become naturalized U.S. citizens. Once here, they receive a card, commonly referred to as a "green card" from the federal government indicating they are permanent residents. Some legal immigrants are refugees who fear persecution based on race, religion, nationality, membership in a particular social group, or political opinion in their home countries. Refugees are resettled every year in the United States after their requests for asylum have been reviewed and granted.
- 2) **Nonimmigrant Visa Holders** are persons who are granted temporary entry into the United States for a specific purpose, such as visiting, working, or studying. The U.S. has 25 types of nonimmigrant visas, including A1 visas for ambassadors, B2 visas for tourists, P1 visas for foreign sports stars who play on U.S. teams and TN visas for Canadians and Mexicans entering the U.S. to work under NAFTA. Visa Holders are allowed to stay in the U.S. as long as they meet the terms of their status.

- 3) **Illegal Immigrants** are citizens of other countries who have entered or remained in the U.S. without permission and without any legal status. Most illegal immigrants cross a land or sea border without being inspected by an immigration officer. Some person falls into illegal status simply by violating the terms of a legal entry document or visa.
- 4) **Absconders** are persons who entered the United States legally but have since violated the conditions of their visa and who have had a removal, deportation, or exclusion hearing before an immigration judge and are under a final order of deportation and have not left the United States.

Currently there are between 8-12 million illegal immigrants living in the U.S., with another estimated 800,000 illegal immigrants entering the country every year. These immigrants by their sheer numbers have become a significant part of local communities and major cities in our nation. Some major urban areas estimate that their immigrant communities, regardless of immigration status, comprise 50%-60% of the local population and other areas report similar trends. The reality for major local police agencies throughout the nation is that the communities they serve and protect are diverse and include significant immigrant communities including documented and undocumented immigrants.

C. CONCERNS WITH LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAWS

Local police agencies must balance any decision to enforce federal immigration laws with their daily mission of protecting and serving diverse communities, while taking into account: limited resources; the complexity of immigration laws; limitations on authority to enforce; risk of civil liability for immigration enforcement activities and the clear need to foster the trust and cooperation from the public including members of immigrant communities.

1) Undermine Trust and Cooperation of Immigrant Communities

Major urban areas throughout the nation are comprised of significant immigrant communities. In some areas the immigrant community reaches 50-60 percent of the local population. Local agencies are charged with protecting these diverse populations with communities of both legal and illegal immigrants. The reality is that undocumented immigrants are a significant part of the local populations major police agencies must protect, serve and police.

Local agencies have worked very hard to build trust and a spirit of cooperation with immigrant groups through community based policing and outreach programs and specialized officers who work with immigrant groups. Local agencies have a clear need to foster trust and cooperation with everyone in these immigrant communities. Assistance and cooperation from immigrant communities is especially important when an immigrant, whether documented or undocumented, is the victim of or witness to a crime. These persons must be encouraged to file reports and come forward with information. Their cooperation is needed to prevent and solve crimes and maintain public order, safety, and security in the whole community. Local

police contacts in immigrant communities are important as well in the area of intelligence gathering to prevent future terroristic attacks and strengthen homeland security.

Immigration enforcement by local police would likely negatively effect and undermine the level of trust and cooperation between local police and immigrant communities. If the undocumented immigrant's primary concern is that they will be deported or subjected to an immigration status investigation, then they will not come forward and provide needed assistance and cooperation. Distrust and fear of contacting or assisting the police would develop among legal immigrants as well. Undoubtedly legal immigrants would avoid contact with the police for fear that they themselves or undocumented family members or friends may become subject to immigration enforcement. Without assurances that contact with the police would not result in purely civil immigration enforcement action, the hard won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.

2) Lack of Resources

The budgets and resources of local police agencies are not unlimited. Local police agencies struggle every year to find the resources to police and serve their respective communities. Since the events of September 11, local agencies have taken on the added duty of serving as the first line of defense and response to terrorist attacks for our country. These efforts on the local level to deter and prevent another terrorist attack and to be prepared to respond to the aftermath of an attack have stretched local resources even further. Since the creation of the Homeland Security Department, federal funding for major city police departments has been greatly reduced. Local agencies have also had to take on more responsibilities in areas that have traditionally been handled by the F.B.I. whose investigative resources are now more focused on counter-terrorism efforts. Local agencies are forced to fill the gap left by the shift of federal resources away from investigating white-collar crimes and bank robberies; areas traditionally handled by federal agencies.

Enforcement of federal immigration laws would be a burden that most major police agencies would not be able to bear under current resource levels. The cost in terms of personnel, facilities and equipment necessary for local agencies to address the 8-12 million illegal immigrants currently living in the United States would be overwhelming. The federal government which has primary authority to enforce immigration laws has itself failed to provide the tremendous amount of resources necessary to accomplish such enforcement to its own agencies specifically charged with that responsibility. Local communities and agencies have even fewer resources to devote to such an effort than the federal government given all the numerous other demands on local police departments.

Local police agencies must meet their existing policing and homeland security duties and can not even begin to consider taking on the added burden of immigration enforcement until federal assistance and funding are in place to support such enforcement. Current calls for local police agencies to enforce immigration come with no clear statement or guarantee to provide

adequate federal funding. Local agencies also fear that the call for local enforcement of immigration laws signals the beginning of a trend towards local police agencies being asked to enter other areas of federal regulation or enforcement.

3) Complexity of Federal Immigration Law

Federal immigration laws are extremely complicated in that they involve both civil and criminal aspects. The federal government and its designated agencies such as I.C.E. and the Department of Justice have clear authority and responsibility to regulate and enforce immigration laws. It is these federal agencies who have the authority to determine if a person will be criminally prosecuted for their violations of immigration laws or be dealt with through a civil deportation process. Based on their authority, training, experience and resources available to them, these federal agencies and the federal courts are in the best position to determine whether or not a person has entered or remained in the country in violation of federal regulations and the applicability of criminal sanctions.

Immigration violations are different from the typical criminal offenses that patrol officers face every day on their local beats. The law enforcement activities of local police officers revolve around crimes such as murder, assaults, narcotics, robberies, burglaries, domestic violence, traffic violations and the myriad of other criminal matters they handle on a regular basis. The specific immigration status of any particular person can vary greatly and whether they are in fact in violation of the complex federal immigration regulations would be very difficult if not almost impossible for the average patrol officer to determine. At this time local police agencies are ill equipped in terms of training, experience and resources to delve into the complicated area of immigration enforcement.

4) Lack of Local Authority and State Law Limitations of Authority

The federal government has clear authority over immigration and immigration enforcement. Federal law does not require the states or local police agencies to enforce immigration laws nor does it give the states or local agencies the clear authority to act in the area of immigration.

Laws in their respective states define the authority of local police officers. The authority of local police officers to act to enforce against criminal acts is clear and well established. However, federal immigration laws include both civil and criminal process to address immigration violations. It is within the authority of federal agencies such as I.C.E. and the Department of Justice to determine if an immigration violation will be dealt with as a criminal matter or through a civil process. Given the complexity of the immigration laws, it would be difficult for local police agencies to determine if a particular violation would result in criminal charges or purely civil proceedings and regulation. This duality in immigration law creates a gap in authority for local police officers who generally are limited to acting only in criminal matters.

In addition state laws may restrict a local police officer's authority to act even in criminal matters in such a way that it would prevent or hinder the officer's ability to investigate, arrest or detain a person for immigration violations alone. Federal agents are specifically authorized to stop persons and conduct investigations as to immigration status without a warrant. Local police

officers may be constrained by local laws that deal with their general police powers such as the ability to arrest without a warrant, lengths of detention and prohibitions against racial profiling.

An example of this conflict between the civil nature of immigration enforcement and the established criminal authority of local police exists in the federal initiative of placing civil immigration detainer notices on the N.C.I.C. system. The N.C.I.C. system had previously only been used to notify law enforcement of strictly criminal warrants and/or criminal matters. The civil detainees being placed on this system by federal agencies notify local officers that the detainees are civil in nature by including a warning that local officers should not act upon the detainees unless permitted by the laws of their state. This initiative has created confusion due to the fact that these civil detainees do not fall within the clear criminal enforcement authority of local police agencies and in fact lays a trap for unwary officers who believe them to be valid criminal warrants or detainees.

5) Risk of Civil Liability

In the past, local law enforcement agencies have faced civil litigation and liability for their involvement in immigration enforcement. For example, the Katy, Texas Police Department participated in an immigration raid with federal agents in 1994. A total of 80 individuals who were detained by the police were later determined to be either citizens or legal immigrants with permission to be in the country. The Katy police department faced suits from these individuals and eventually settled their claims out of court.

Because local agencies currently lack clear authority to enforce immigration laws, are limited in their ability to arrest without a warrant, are prohibited from racial profiling and lack the training and experience to enforce complex federal immigration laws, it is more likely that local police agencies will face the risk of civil liability and litigation if they chose to enforce federal immigration laws.

D. M.C.C. NINE (9) POINT POSITION STATEMENT

Based upon a review, evaluation and deliberation regarding the important and complex issue of local enforcement of federal immigration laws, the members of M.C.C., who are the 57 Chief Executive Officers of police departments located within a metropolitan area of more than 1.5 million population and which employs more than 1,000 law enforcement officers, hereby set forth our consensus position statement, which is comprised of nine crucial components.

1) SECURE THE BORDERS

Illegal immigration is a national issue and the federal government should first act to secure the national borders to prevent illegal entry into the United States. We support further and adequate funding of the federal agencies responsible for border security and immigration enforcement so they can accomplish this goal. We also support consideration of all possible solutions including construction of border fences where appropriate, use of surveillance technologies and increases in the number of border patrol agents. Only when the federal government takes the necessary steps to close the revolving door that exists at our national borders will it be possible for local police agencies to even begin to consider dedicating limited local resources to immigration enforcement.

2) ENFORCE LAWS PROHIBITING THE HIRING OF ILLEGAL IMMIGRANTS

The federal government and its agencies should vigorously enforce existing immigration laws prohibiting employers from hiring illegal immigrants. Enforcement and prosecution of employers who illegally seek out and hire undocumented immigrants or turn a blind eye to the undocumented status of their employees will help to eliminate one of the major incentives for illegal immigration.

3) CONSULT AND INVOLVE LOCAL POLICE AGENCIES IN DECISION MAKING

Major Cities Chiefs and other representatives of the local law enforcement community such as the International Association of Chiefs of Police and local district attorneys and prosecutors should be consulted and brought in at the beginning of any process to develop a national initiative to involve local police agencies in the enforcement of federal immigration laws. The inclusion of local law enforcement at every level of development would utilize their perspective and experience in local policing, address their concerns and likely result in a better program that would be more effectively implemented.

4) COMPLETELY VOLUNTARY

Any initiative to involve local police agencies in the enforcement of immigration laws should be completely voluntary. The decisions related to how local law enforcement agencies allocate their resources, direct their workforce and define the duties of their employees to best serve and protect their communities should be left in the control of state and local governments. The decision to enter this area of enforcement should be left to the local government and not mandated or forced upon them by the federal government through the threat of sanctions or the withholding of existing police assistance funding.

5) INCENTIVE BASED APPROACH WITH FULL FEDERAL FUNDING

Any initiative to involve local police agencies in the enforcement of immigration laws should be an incentive based approach with full federal funding to provide the necessary resources to the local agencies that choose to enforce immigration laws. Federal funds should be available to participating local agencies to cover the costs associated with enforcement such as expenditures on equipment and technology, training and educational programs and costs of housing, caring for and transporting immigrants prior to their release to federal authorities.

6) NO REDUCTION OR SHIFTING OF CURRENT ASSISTANCE FUNDING

The funding of any initiative to involve local police agencies in the enforcement of immigration laws should not be at the detriment or reduction directly or indirectly of any current federal funding or programs focused on assisting local police agencies with local policing or homeland security activities. Local police agencies are currently working on strained budgets and limited resources to meet local policing needs and strengthening homeland security and in fact need increased funding and grant assistance in these areas. Merely shifting or diverting federal funding currently available for local policing and homeland security activities to any new immigration enforcement initiative would only result in a detrimental net loss of total resources available to local police agencies to police their neighborhoods and strengthen homeland security.

7) CLARIFICATION OF AUTHORITY AND LIMITATION OF LIABILITY

The authority of local police agencies and their officers to become involved in the enforcement of immigration laws should be clearly stated and defined. The statement of authority should also establish liability protection and an immunity shield for police officers and police agencies that take part in immigration enforcement as authorized by clear federal legislation.

8) REMOVAL OF CIVIL IMMIGRATION DETAINERS FROM THE N.C.I.C. SYSTEM

Until the borders are secured and vigorous enforcement against employers who hire illegal immigrants has taken place and the concerns regarding lack of authority and confusion over the authority of local agencies to enforce immigration laws and the risk of civil liabilities are adequately addressed, M.C.C. strongly requests that the federal agencies cease placing civil immigration detainees on N.C.I.C. and remove any existing civil detainees currently on the system. The integrity of the system as a notice system for criminal warrants and/or criminal matters must be maintained. The inclusion of civil detainees on the system has created confusion for local police agencies and subjected them to possible liability for exceeding their authority by arresting a person upon the basis of a mere civil detainee.

M.C.C. would encourage the federal agencies to seek federal criminal warrants for any person they have charged criminally with violations of immigration laws and submit those criminal warrants on the N.C.I.C. system so the warrants can be acted upon by local police officers within their established criminal enforcement authority and training.

9) COMMITMENT OF CONTINUED ENFORCEMENT AGAINST CRIMINAL VIOLATORS REGARDLESS OF IMMIGRATION STATUS

M.C.C. member agencies are united in their commitment to continue arresting anyone who violates the criminal laws of their jurisdictions regardless of the immigration status of the perpetrator. Those immigrants, documented and/or undocumented, who commit criminal acts will find no safe harbor or sanctuary from their criminal violations of the law within any major city but will instead face the full force of criminal prosecution.

APPENDIX B

Prince William County, Virginia,
Police Department's General Order
On Law Enforcement Response to
Illegal Immigration

PRINCE WILLIAM COUNTY POLICE DEPARTMENT MANUAL OF GENERAL ORDERS		
General Order: 45.01	Effective:	Number of Pages: 4
LOCAL ENFORCEMENT RESPONSE TO ILLEGAL IMMIGRATION : GENERAL GUIDELINES		

- A. The purpose of this General Order is to establish a policy for the local participation of the enforcement of immigration laws. It is not intended to limit the Police Department’s authority under the United States or Virginia Constitutions or under any other laws.
- B. Although immigration enforcement is vested in the Federal government, local law enforcement has an increasing role in identifying, investigating, and apprehending persons who may be in violation of federal immigration law, particularly those who commit other violations of law. Preliminary investigations shall encompass all who, through the normal course of business, are lawfully detained within the guidance provided by this General Order and the law. The primary focus of police investigative efforts will be those who may be in violation of federal immigration law who are criminal aliens, as defined in Section F.
- C. An officer may inquire into immigration status prior to the establishment of probable cause if he has reasonable articulable suspicion as part of initial identification inquiry to acquire an understanding of the facts which may lead to the discovery of additional facts that would lawfully support an extension of the initial detention for further investigation into immigration matters. However, if there is probable cause to believe a person is in violation of federal immigration law and when such inquiry will not unlawfully expand the duration of the detention, it is the policy of this Department that officers ***shall*** investigate the citizenship or immigration status of a person who is lawfully detained for a violation of a state law or county ordinance by following the procedures set out in this General Order. As previously stated, this General Order is not intended to limit the Police Department’s authority under the Fourth Amendment of the United States Constitution.
- D. Racial profiling, the practice of stopping, detaining, or searching a person based solely on factors such as their race, color, or ethnicity, is prohibited and in fact, illegal. Race, color, ethnicity, or other non-criminal traits are not, in and of themselves, sufficient to constitute reasonable suspicion or probable cause to justify stopping, detaining, or searching a person (see General Order 2.01, C- 56).
- E. Public Safety is enhanced when victims file police incident reports. Therefore, victims and essential witnesses will not be subject to immigration inquiries as a matter of routine.
- F. Description of Frequently Used Terms;
 - 1. **Alien** – A person who is not a citizen of the United States.
 - 2. **Alien Absconders** – A fugitive remaining in the United States after an immigration judge has ordered them deported.

3. **Criminal Alien** – Aliens who have committed crimes that make them eligible to be removed from the United States.
4. **Foreign National** – A person who is not a permanent United States resident.
5. **Illegal Alien** – A person who has entered the country illegally and is deportable or is residing in the United States illegally after entering legally (for example, using a tourist visa and remaining after the visa expires).
6. **Undocumented Immigrant** – Any person of another country who has entered or remained in the United States without permission and without legal status.
7. **ICE** – U.S. Department of Homeland Security’s Bureau of Immigration and Customs Enforcement.
8. **LESC** – the ICE Law Enforcement Support Center.
9. **National Crime Information Center (NCIC) Wanted Status (Hits)** – At this time there are two types of Hits:
 - a) **“OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL”** – This NCIC hit pertains to an ICE Federal *civil process*. This language in NCIC means that the individual has been ordered to leave the Country but has not complied with the order.
 - b) **“PREVIOUSLY DEPORTED FELON”** – A type of NCIC Hit that pertains to an ICE Federal Criminal Felony.
10. **Permanent Resident Alien** – Any person who is residing in the United States as a legally recognized and lawfully recorded permanent resident.
11. **Legal presence** – A person who is legally present is either a U.S. citizen or is legally authorized to be in the United States. Legal presence can be proved using a U.S. birth certificate or U.S. passport. It also can be proved using a variety of other government issued documents such as a Certificate of Citizenship or Naturalization, Resident Alien Card or a valid foreign passport with a visa, I-94 or an I-94W with a participating country. Documents presented as proof of legal presence must show the full legal name and date of birth. Virginia’s legal presence law took effect on January 1, 2004. A list of accepted documents under that law is available at:

<http://www.dmv.state.va.us/webdoc/pdf/dmv141.pdf>

12. **Probable Cause** – The legal standard of probable cause, as the term suggests, relates to probabilities that are based upon the factual and practical considerations in everyday life as perceived by reasonable and prudent persons. The presence or absence of probable cause is not to be examined from the perspective of a legal technician. Rather, probable cause exists when the facts and circumstances within the officer's knowledge, and of which he has reasonably trustworthy information, alone are sufficient to warrant a person of reasonable caution to believe that an offense has been or is being committed. *Draper v. United States*, 358 U.S. 307, 313 (1959); *Schaum v. Commonwealth*, 215 Va. 498, 500, 211 S.E.2d 73, 75 (1975). In order to ascertain whether probable cause exists, courts will focus upon “what the totality of the circumstances meant to police officers [Page 821] trained in analyzing the observed conduct for purposes of crime control.” *Hollis v. Commonwealth*, 216 Va. 874, 877, 223 S.E.2d 887, 889 (1976).

Taylor v. Commonwealth, 222 Va. 816, 820-821, 284 S.E.2d 833 (1981), cert denied, 456 U.S. 906 (1982)

“An apparent state of facts found to exist upon reasonable inquiry, (that is, such inquiry as the given case renders convenient and proper,) which would induce a reasonably intelligent and prudent man to believe, in a criminal case, that the accused person had committed the crime charged, or in a civil case that a cause of action existed.” (Black’s Law Dictionary)

G. Verification of Legal Presence

For purposes of this policy, the Department shall be guided by §46.2-328.1 *Code of Virginia* in determining what forms of identification are sufficient to establish legal presence.

Generally, a **valid Virginia** Driver’s License or Special Identification card (Adult ID card, Child ID card, or Hearing Impaired Photo ID Card – commonly referred to as a “Walker’s ID”), with an **ORIGINAL issued date of January 1, 2004 or later**, shall serve as proof of legal presence, as noted in § 46.2-328.1 *Code of Virginia* (Virginia’s legal presence law took effect on January 1, 2004).

Legal presence may be determined by checking nationwide databases maintained by ICE or by contacting the ICE Law Enforcement Support Center (LESC).

H. Legal Authority for Enforcement of Immigration Laws (see General Order 45.02).

Warrants and detainers issued by ICE may be criminal or civil. Whether ICE is proceeding criminally or civilly against the subject controls the response of local law enforcement.

POLICE **MAY ARREST** under any of the following conditions:

- 1) The requirements of §19.2-81.6 *Code of Virginia* are satisfied.

§19.2-81.6 Code of Virginia - All law-enforcement officers enumerated in § 19.2-81 shall have the authority to enforce immigration laws of the United States, pursuant to the provisions of this section. Any law-enforcement officer enumerated in § 19.2-81 may, in the course of acting upon reasonable suspicion that an individual has committed or is committing a crime, arrest the individual without a warrant upon receiving confirmation from the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security that the individual (i) is an alien illegally present in the United States, and (ii) has previously been convicted of a felony in the United States and deported or left the United States after such conviction. Upon receiving such confirmation, the officer shall take the individual forthwith before a magistrate or other issuing authority and proceed pursuant to § 19.2-82.

- 2) An NCIC **Immigration Violator File (IVF)** hit reads “**PREVIOUSLY DEPORTED FELON**,” a hit confirmation is received, **AND** a Criminal Immigration Detainer from ICE is received and/or issued.
- 3) An NCIC IVF hit reads “**OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL**” (such NCIC warrants are considered civil in nature), **AND** the officer has charged a person for a separate Class 1 or Class 2 misdemeanor or a traffic infraction, for which the law requires the person be released on a summons in accordance with §19.2-74 *Code of Virginia* or §46.2-940 *Code of Virginia*, the NCIC IVF hit, absent extenuating circumstances, shall be considered as a strong factor to proceed under §19.2-82 *Code of Virginia* (Arrest without warrant), in determining whether the person is likely to disregard the summons. *NOTE; When there is probable cause to believe someone is an illegal alien*

but NO NCIC IVF Hit is received/returned on the person, the law is unclear as to whether the absence of such a hit is to be considered a factor in determining whether the person should be brought before the magistrate on the local charge. In such cases where there is no NCIC IVF Hit, officers shall make a determination based on all available information as to whether the person is likely to disregard the summons and shall act accordingly.

POLICE **MAY NOT ARREST** under the following conditions:

1. Solely because a person is an illegal alien. This is because the Police Department has no legal authority to independently enforce Federal Immigration Law. When probable cause exists to believe a person may be an illegal alien a Field Interview Card shall be completed whenever possible and forwarded to the Crime Analysis Unit. The Crime Analysis Unit shall in turn forward the information to the ICE LESC.
2. Solely based upon an NCIC IVF hit which reads “**OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL.**” These are considered civil in nature. Officers have no authority to arrest based solely on **CIVIL** administrative warrants or detainers for immigration issues. A Field Interview Card shall be completed whenever possible and forwarded to the Crime Analysis Unit. The Crime Analysis Unit shall in turn forward the information to the ICE LESC.

PRINCE WILLIAM COUNTY POLICE DEPARTMENT MANUAL OF GENERAL ORDERS		
General Order: 45.02	Effective:	Number of Pages: 4
LOCAL ENFORCEMENT RESPONSE TO ILLEGAL IMMIGRATION: MEMBER RESPONSIBILITIES		

A. Officer Response:

1. Officers **shall** investigate the citizenship or immigration status of any person who, in the normal course of business, is lawfully detained for a violation of a state law or county ordinance, if (1) probable cause exists to believe such person is in violation of federal immigration laws; (2) the inquiry has not already occurred in the encounter, and (3) the inquiry will not unlawfully expand the duration of the detention. There may be circumstances under which the Fourth Amendment authorizes an earlier inquiry and officers may use their discretion in accordance with training to investigate immigration status at an earlier stage.

Officers must remain cognizant at all times of the legal justification to continue detention of a person. The permissible length of a lawful detention in every instance depends on all circumstances.

Officers are reminded there is no law compelling a person to identify himself or herself to a law enforcement officer in all instances. However, presenting false identification to a law enforcement officer is a violation of State law under §19.2-82.1 *Code of Virginia*.

2. If the officer has probable cause to believe the detained person is in violation of federal immigration law and the person does not produce any of the documents outlined below to prove legal presence, the officer **shall** inquire as to the legal presence of the person by checking nationwide databases maintained by the **U.S. Department of Homeland Security’s Bureau of Immigration and Customs Enforcement (ICE)** or by contacting the **ICE Law Enforcement Support Center (LESC)**. Officers shall conduct a **Query Wanted (QW)** through NCIC. This QW automatically searches the **Immigration Violator File (IVF)** contained in NCIC. ICE is the only agency authorized to enter and maintain records in the IVF.
3. Generally, a person may prove legal presence by producing a **valid Virginia** Operator’s License or Special Identification Card (Adult ID card, Child ID card, or Hearing Impaired Photo ID Card – commonly referred to as a “Walker’s ID”), with an **ORIGINAL** issued date of January 1, 2004 or later, as noted in § 46.2-328.1 *Code of Virginia* (Virginia’s legal presence law took effect on January 1, 2004). A birth certificate from any U.S. State or Territory, or any of the documents identified by the Virginia Department of Motor Vehicles, as referenced in General Order 45.01, F-11, will also serve as proof of legal presence. If a person produces a document that establishes legal presence, members will not routinely inquire further about the person’s legal presence.

4. Whenever an officer runs a wanted check on an individual through NCIC, the IVF database is automatically checked and a “hit” may be received. It has long been the policy of the Department to serve criminal warrants originating from NCIC wanted queries. Similar to other law enforcement agencies, criminal warrants obtained by ICE agents are entered into the NCIC wanted persons’ file. However, ICE hits for deported felons and alien absconders are based on administrative warrants and are entered in the NCIC IVF file.

NCIC entries contain both civil and criminal immigration violations. Officers should be careful to determine the nature of the underlying offense resulting in the NCIC entry. An entry into NCIC does not guarantee the officer has actual authority to take the person into custody.

5. Officers who receive an NCIC “hit” on an Immigration Violator File shall carefully read the IVF hit received through NCIC. There are only two (2) possible responses that will appear. Several lines from the top of the response will be the words “**PREVIOUSLY DEPORTED FELON**” or “**OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL.**”

- a. “**PREVIOUSLY DEPORTED FELON**”

- i. The officer shall request a hit confirmation and Criminal Immigration Detainer, as outlined below in B-3.
- ii. If a hit confirmation **and** a Criminal Immigration Detainer from ICE is received and/or issued, absent other charges which require the subject be taken before the magistrate, the suspect will be brought forthwith to the Adult Detention Center (ADC) which has established policies in place with ICE. An Incident Report titled “Criminal Immigration Arrest” shall be completed.
- iii. If the officer has reasonable suspicion to believe a person has committed or is committing a crime, absent probable cause to arrest for that crime, if a hit confirmation is received from ICE, the officer shall take the individual forthwith before a magistrate and obtain an arrest warrant for a violation of § 19.2-81.6 *Code of Virginia*. Recurrent applications for a warrant under this subsection are not permitted within a six-month period, as enumerated in § 19.2-82 *Code of Virginia*.

If reasonable suspicion does not exist that the arrested person has committed or is committing a separate offense, officers may act solely on the confirmation and detainer issued by the LESC for a “Previously Deported Felon” and the arrested person shall be transported to the ADC as outlined in section ii above.

- iv. The Police Department’s Criminal Alien Unit is comprised of detectives who are specially trained in ICE’s 287(g) program. In certain cases these detectives may be requested to respond and further investigate the matter, if circumstances warrant.
- v. Absent independent lawful authority to detain, such as other charges that justify detention or physical arrest, if an NCIC hit is made and confirmation of a Criminal Immigration Detainer is **not** received or issued within a reasonable period of time, the person must be released. Officers will document the detained person’s identification information on a Field Interview Card and forward it to the Crime Analysis Unit.

- vi. If the suspect is remanded to the ADC for another offense, the illegal immigration status shall be relayed to ADC booking personnel, which has established policies and practices in place to coordinate with ICE.

b. **“OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL”**

- i. The majority of these ICE warrants represents civil administrative procedures and this hit typically refers to persons who have failed to appear for a hearing or failed to leave the United States after having been ordered to do so.
- ii. Officers shall **not** confirm and shall not request automatic issuance of a detaining order from the database because such detaining order will be invalid on this type of IVF hit and shall **not** take the individual into custody, unless such person is lawfully detained for another violation of the law. Officers will document the detained person’s identification information on a Field Interview Card and forward it to the Crime Analysis Unit. The subject must be released.
- iii. While officers may not automatically arrest a person based solely on this hit, officers shall, absent extenuating circumstances, consider this type of NCIC IVF hit as a strong factor in deciding whether or not to release on a summons for a separate violation of the law. This section only applies when an individual is being arrested for another offense for which the law indicates the person be released on a summons unless certain factors are present.

Officers may proceed under §19.2-82 *Code of Virginia* (Arrest without warrant), **only** if the provisions of §19.2-74 *Code of Virginia* or §46.2-940 *Code of Virginia*, are satisfied and the NCIC IVF hit is confirmed.

If the officer takes the suspect before a magistrate, the officer shall request a copy of the hit confirmation. A copy of the NCIC IVF Hit confirmation shall be presented to the magistrate. The illegal immigration status shall be relayed to ADC booking personnel, which has established policies and practices in place with ICE. If the Magistrate orders the suspect to be released officers shall document the suspect’s identification information on a Field Interview Card and forward it to the Crime Analysis Unit.

- c. NCIC hits are factors which may provide legal justification to continue detention of a person. The permissible length of a lawful detention in every instance depends on all circumstances.
- 6. Any time probable cause exists to believe a person is in violation of federal immigration laws, a Field Interview Card shall be completed with as much information as possible and forwarded to the Crime Analysis Unit who in turn shall forward the information to the ICE LESC. However, whenever a police offense report (PD 211) is written either for a “Criminal Immigration Arrest” or for any other offense, if there is probable cause to believe a subject identified in the police report is in violation of federal immigration laws, in lieu of completing the entire Field Interview Card, the officer need only complete the back of the Field Interview Card pertaining to illegal immigration and attach the Field Interview Card to the submitted PD 211 as a supplement.
 - 7. Officers shall cooperate with federal immigration authorities and provide or receive information about the immigration status of any person as permitted or required by law.

B. Office of Public Safety Communications (OPSC) Response:

1. When a QW (Query Wanted) transaction is conducted through NCIC, the Immigration Violator File (IVF) is automatically searched for records on criminal illegal aliens who have been deported for serious crimes. It also contains records of civil immigration violations or persons who have violated some section of the Immigration and Nationality Act.
2. OPSC shall, as requested, perform initial inquiries between the Department and the ICE LESC. Upon request, OPSC will perform an IAQ (Illegal Alien Query) through NLETS.
3. OPSC will assist members in the confirmation of criminal alien arrest warrants, in accordance with General Order 26.01, E (NCIC Hits). Once the identity of the person and the warrant or detainer is confirmed, the ICE LESC will be contacted for acceptance of a criminal hold on the suspect.
4. Requests for confirmation of active Prince William County warrants shall follow established policy, regardless of immigration status. Any suspected illegal immigration status shall be relayed to the arresting officer.
5. Citizens wishing to make a routine complaint of the illegal immigration status of an individual will be referred to the ICE public tip line. The Police Department will not routinely document or follow-up on such information.

C. Prince William County Criminal Justice Academy (Academy) Responsibility:

1. The Academy's role with regard to this General Order is to provide training to members in the Department's Enforcement of Immigration Laws policy.
2. New recruits will receive initial training as a component of local training.
3. All sworn members will receive mandatory initial training. In-service training will be provided to members as deemed necessary.

APPENDIX C

287(g) Memorandum of Agreement
Between Immigration and
Customs Enforcement (ICE) and
the Collier County, Florida
Sheriff's Department

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (MOA) constitutes an agreement between United States Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS), and the Collier County Sheriff's Office (CCSO), pursuant to which ICE authorizes up to a maximum of 32 nominated, trained, and certified personnel of the Collier County Sheriff's Office (hereinafter interchangeably referred to as CCSO or the "Law Enforcement Agency" [LEA]), to perform certain immigration enforcement functions as specified herein. The CCSO represents Collier County in the implementation and administration of this MOA. It is the intent of the parties that these delegated authorities will enable the LEA to identify and process immigration violators in Collier County consistent with the terms of this MOA. The ICE and LEA points of contact for purposes of this MOA are identified in Appendix A.

I. PURPOSE

The purpose of this MOA is to set forth the terms and conditions pursuant to which selected LEA personnel (participating LEA personnel) will be nominated, trained, and thereafter perform certain functions of an immigration officer within the LEA. This MOA sets forth the scope of the immigration officer functions that DHS is authorizing the participating LEA personnel to perform. Nothing contained herein shall otherwise limit the jurisdiction and powers normally possessed by participating LEA personnel as members of the LEA. However, the exercise of the immigration enforcement authority granted under this MOA to participating LEA personnel shall occur only as provided in this MOA. This MOA also describes the complaint procedures available to members of the public regarding immigration enforcement actions taken by participating LEA personnel pursuant to this agreement.

II. AUTHORITY

Section 287(g) of the Immigration and Nationality Act (INA), also codified at 8 U.S.C. § 1357(g), as amended by the Homeland Security Act of 2002, Public Law 107-276, authorizes the Secretary of the Department of Homeland Security, acting through the Assistant Secretary of ICE, to enter into written agreements with a State or any political subdivision of a State so that qualified personnel can perform certain functions of an immigration officer. This MOA constitutes such a written agreement.

III. POLICY

This MOA sets forth the scope of the immigration officer functions that DHS is authorizing the participating CCSO personnel to perform. It sets forth with specificity the duration of the authority conveyed and the specific lines of authority, including the requirement that participating CCSO personnel are subject to ICE supervision while performing immigration-related duties pursuant to this MOA. For the purposes of this MOA, ICE officers will provide supervision for participating CCSO personnel only as to immigration enforcement functions. CCSO retains supervision of all other aspects of the employment and performance of duties of participating CCSO personnel.

IV. ASSIGNMENTS

Before participating LEA personnel receive authorization to perform immigration officer functions granted under this MOA, they must successfully complete mandatory 5 week (4 week for LEA personnel functioning solely in a correctional facility or ICE detention facility) training in the enforcement of federal immigration laws and policies as provided by ICE instructors and thereafter pass examinations equivalent to those given to ICE officers. Only participating LEA personnel who are selected, trained, authorized, and supervised, as set out herein, have authority pursuant to this MOA to conduct the immigration officer functions enumerated in this MOA.

Participating LEA personnel performing immigration-related duties pursuant to this MOA will be LEA officers assigned to the Collier County Jail, the Driver's License Office Enforcement Bureau, Fugitive Warrants Bureau, Marine Bureau, Criminal Investigations Division (CID), Street Gang Enforcement Bureau, Vice and Narcotics Bureau and Strategic Enforcement Team (SET). Participating LEA personnel will be exercising their immigration-related authorities during the course of criminal investigations involving aliens encountered within Collier County. Any combination of these officers or others may be assigned and/or co-located as task force officers to assist ICE agents with criminal investigations.

The mission of these various LEA assignments are summarized as follows:

Collier County Jail: Booking and/or Classification officers assigned to the County Jail.

Fugitive Warrants Bureau: The LEA personnel assigned to the Warrants Bureau are charged with the responsibility of identifying high-risk felons who are wanted for crimes or offenses that represent a significant threat to public safety.

Vice and Narcotics Bureau: The LEA personnel assigned to these various drug enforcement units are involved with illegal trafficking in narcotics investigations and gang investigations.

Street Gang Unit: The LEA personnel assigned to the anti-gang unit engage in law enforcement actions that are targeted against gang activity.

Criminal Investigation Division (CID): The LEA personnel assigned to CID are charged with the responsibility of identifying enterprises and other forms of criminal activity.

Strategic Enforcement Teams (SET): The LEA personnel assigned to SET are officers who have been assigned to the Patrol Division and charged with the responsibility of assisting the agency and surrounding local authority on gathering criminal intelligence and developing strategies for arresting and successfully prosecuting subjects involved in criminal activity throughout Collier County.

Driver's License Office Enforcement: The LEA personnel assigned to the Driver's License Office Enforcement Bureau are tasked with investigating identity theft and the use of fraudulent documents to obtain Florida Drivers License or Identification cards.

Marine Unit: The LEA personnel assigned to this unit are responsible for maintaining the security of the 88 nautical miles of shoreline and open ocean as a result of the vulnerability of our community through water access. This unit is also responsible for the coordination and operational assistance during a mass migration incident that may occur within our counties jurisdiction.

V. DESIGNATION OF AUTHORIZED FUNCTIONS

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

- The power and authority to interrogate any alien or person believed to be an alien as to his right to be or remain in the United States (INA § 287(a)(1) and 8 C.F.R. § 287.5(a)(1)) and to process for immigration violations those individuals who are convicted of State or Federal felony offenses;
- The power to arrest without warrant any alien entering or attempting to unlawfully enter the United States, or any alien in the United States, if the officer has reason to believe the alien to be arrested is in the United States in violation of law and is likely to escape before a warrant can be obtained. INA § 287(a)(2) and 8 C.F.R. 287.5(c)(1).
- The power to arrest without warrant for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, expulsion, or removal of aliens. INA § 287(a)(4) and 8 C.F.R. § 287(c)(2). Notification off such arrest must be made to ICE within twenty-four (24) hours;
- The power to serve warrants of arrest for immigration violations under 8 C.F.R. § 287.5(e)(3).
- The power and authority to administer oaths and to take and consider evidence (INA § 287(b) and 8 C.F.R. § 287.5(a)(2)) to complete required criminal alien processing, to include fingerprinting, photographing, and interviewing, 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 (INA Section 239, 8 C.F.R. 239.1; INA Section 238, 8 C.F.R. 238.1; INA Section 241(a)(5), 8 C.F.R. 241.8; INA Section 235(b)(1), 8 C.F.R. 235.3) including the preparation of the Notice to Appear (NTA) application or other charging document, as appropriate, for the signature of an ICE officer for aliens in categories established by ICE supervisors;
- The power and authority to issue immigration detainers (8 C.F.R. § 287.7) and I-213, Record of Deportable/Inadmissible Alien, for processing aliens in categories established by ICE supervisors; and
- The power and authority to detain and transport (8 C.F.R. § 287.5(c)(6)) arrested aliens to ICE-approved detention facilities.

VI. DETENTION ISSUES

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

If ICE determines that it is necessary, the LEA will enter into an Inter-Governmental Service Agreement (IGSA) with ICE pursuant to which, the LEA will provide, for a reimbursable fee, detention of incarcerated aliens in LEA facilities, upon the completion of their sentences. The LEA facility will be expected to meet the ICE detention standards for either a less than 72-hour or over 72-hour facility as determined by ICE, and consistent with the anticipated detention period.

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

Upon completion of processing and release from the LEA's affiliated detention facilities of an individual who participating LEA personnel have determined to be a removable alien, the alien will be transported by the LEA on the same day to an ICE designated office or facility, after notification to and coordination with the ICE supervisory officer, so that no further detention costs will be incurred by ICE.

VII. NOMINATION OF PERSONNEL

The Collier County Sheriff's Office will nominate candidates for initial training and certification under this MOA. For each candidate, ICE may request any information necessary for a background check and to evaluate a candidate's suitability to participate in the enforcement of immigration authorities under this MOA. All candidates must be United States citizens. All candidates must have at least two years of LEA work experience. All candidates must be approved by ICE and must be able to qualify for appropriate federal security clearances.

Should a candidate not be approved, a substitute candidate may be submitted if time permits such substitution to occur without delaying the start of training. Any future expansion in the number of participating LEA personnel or scheduling of additional training classes may be based on an oral agreement of the parties, but will be subject to all the requirements of this MOA.

VIII. TRAINING OF PERSONNEL

ICE will provide participating LEA personnel with the mandatory 4 and 5 week training tailored to the immigration functions to be performed.

Training will include, among other things: (i) discussion of the terms and limitations of this MOA; (ii) the scope of immigration officer authority; (iii) relevant immigration law; (iv) the ICE Use of Force Policy; (v) Civil Rights laws; (vi) the U.S. Department of Justice "Guidance Regarding the Use Of Race By Federal Law Enforcement Agencies" dated June 2003; (vii) public outreach and complaint procedures; (viii) liability issues; (ix) cross-cultural issues; and (x) the obligations under federal law and the Vienna Convention on Consular Relations to make proper notification upon the arrest or detention of a foreign national.

Approximately one year after the participating LEA personnel are trained and certified, ICE may provide additional updated training on relevant administrative, legal, and operational issues related to the performance of immigration officer functions, unless either party terminates this MOA pursuant to Section XX below. Local training on relevant issues will be provided on an ongoing basis by ICE supervisors or a designated team leader.

IX. CERTIFICATION AND AUTHORIZATION

The ICE Training Division will certify in writing to the ICE Special Agent in Charge and the ICE Field Office Director in Washington, DC the names of those LEA personnel who successfully complete training and pass all required testing. Upon receipt of Training Division certification, the ICE Special Agent in Charge and the ICE Field Office Director in Washington, DC will provide the participating LEA personnel with a signed authorization to perform specified functions of an immigration officer for an initial period of one year from the date of the authorization. ICE will also provide a copy of the authorization to the LEA. The ICE supervisory officer, or designated team leader, will evaluate the activities of all personnel certified under this MOA.

Authorization of participating LEA personnel to act pursuant to this MOA may be revoked at any time by ICE or the LEA. Such revocation will require immediate notification to the other party to this MOA. The Collier County Sheriff and the ICE Special Agent in Charge and ICE Field Office Director in Washington, DC will be responsible for notification of the appropriate personnel in their respective agencies. The termination of this MOA, pursuant to Section XX below, shall constitute revocation of all immigration enforcement authorizations delegated hereunder.

X. COSTS AND EXPENDITURES

Participating LEA personnel will carry out designated functions at the LEA's expense, including salaries and benefits, local transportation, and official issue material.

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

If ICE determines that it is necessary, the LEA will enter into an Inter-Governmental Service Agreement (IGSA) with ICE pursuant to which the LEA will provide, for a reimbursable fee, transportation for all incarcerated aliens in the LEA's facilities, upon the completion of their sentences, or upon completion of processing in those circumstances in which state or local prosecution is not available, to a facility or location designated by ICE. If ICE determines that it is necessary, the LEA will provide ICE, at no cost, with an office within each participating LEA facility for ICE supervisory employees to work.

ICE agrees to be responsible for the purchase, installation, and maintenance of technology (computer/IAFIS/Photo and similar hardware/software) necessary to support the investigative functions of participating LEA personnel at each LEA facility with an active 287(g) program. The use of this equipment is to be limited to the performance of responsibilities authorized by this MOA under section 287(g) of the INA by participating LEA personnel. ICE also agrees to provide the necessary technological support and software updates for use by participating LEA 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 Special Agent in Charge and the ICE Field Office Director in Washington, DC.

XI. ICE SUPERVISION

Immigration enforcement activities conducted by the participating LEA personnel will be supervised and directed by ICE supervisory officers or the designated team leader in Washington, DC. Participating LEA personnel are not authorized to perform immigration officer functions, except when working under the supervision of an ICE officer. Participating LEA personnel shall give timely notice to the ICE supervisory officer within 24 hours of any detainer issued under the authorities set forth in this MOA.

In the correction setting, participating CCSO personnel shall give notice to the ICE supervisory officer as soon as practicable after, and in all cases within 24 hours of, any detainer issued under the authorities set forth in this MOA. In the field setting, participating CCSO deputies will contact an ICE duty officer at the time of exercising the authority in this MOA for guidance. The actions of participating CCSO personnel will be reviewed by the ICE supervisory officers on an ongoing basis to ensure compliance with the requirements of the immigration laws and procedures and to assess the need for additional training or guidance.

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

In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating LEA personnel in exercising these authorities shall be DHS and ICE policies and procedures, including the ICE Use of Force Policy. However, when engaged in immigration enforcement activities, no participating LEA personnel will be expected or required to violate or otherwise fail to maintain the LEA's rules, standards, or policies, or be required 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 and LEA rules, standards, or policies, the conflict shall be promptly reported to the ICE Special Agent in Charge and ICE Field Office Director in Washington, DC, or designees, and the Collier County Sheriff's Office, or designee, when circumstances safely allow the concern to be raised. The Special Agent in Charge, the ICE Field Office Director in Washington, DC, and the Sheriff of Collier County shall attempt to resolve the conflict.

Whenever possible, CCSO will deconflict all addresses, telephone numbers, and known or suspected identities of violators of the INA with ICE's Office of Investigations (OI) or ICE's Office of Detention and Removal (DRO) prior to taking any enforcement action. This deconfliction will, at a minimum, include wants/warrants, criminal history, and a person, address, and vehicle check through TECS II.

CCSO participating personnel authorized pursuant to this MOA may be assigned and/or co-located with ICE as task force officers to assist ICE agents with criminal investigations.

XII. REPORTING REQUIREMENTS

The LEA will be responsible for tracking and maintaining accurate data and statistical information for their 287(g) program, including any specific tracking data requested by ICE. Upon ICE's request, such data and information shall be provided to ICE for comparison and verification with ICE's own data and statistical information, as well as for ICE's statistical reporting requirements and to assess the progress and success of the LEA's 287(g) program.

XIII. LIABILITY AND RESPONSIBILITY

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

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

Participating LEA personnel will only be treated as federal employees for purposes of the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, and worker's compensation claims, 5 U.S.C. § 8101 et seq., when performing a function as authorized by this MOA. 8 U.S.C. § 1357(g)(7). It is the understanding of the parties to this MOA that participating LEA personnel will enjoy the same defenses and immunities available to ICE officers from personal liability arising from tort lawsuits based on actions conducted in compliance with this MOA. 8 U.S.C. § 1357(g)(8).

Participating LEA personnel named as defendants in litigation arising from activities carried out under this MOA may request representation by the U.S. Department of Justice. Such requests must be made in writing directed to the Attorney General of the United States, and will be handled in coordination with the ICE Special Agent in Charge and/or the ICE Field Office Director in Washington, DC. Requests for representation must be presented to the ICE Office of the Chief Counsel at 901 North Stuart Street, Suite 1307, Arlington, Virginia 22203. Any request for representation and related correspondence must be clearly marked "Subject to Attorney-Client Privilege." The Office of the Chief Counsel will forward the individual's request, together with a memorandum outlining the factual basis underlying the event(s) at issue in the lawsuit, to the ICE Office of the Principal Legal Advisor, which will forward the request, the factual memorandum, and an advisory statement opining whether such representation would be in the interest of the United States, to the Director of the Constitutional and Specialized Torts Staff, Civil Division, Department of Justice. ICE will not be liable for defending or indemnifying acts of intentional misconduct on the part of participating LEA personnel.

The LEA agrees to cooperate with any federal investigation related to this MOA to the full extent of its available powers. It is understood that information provided by any LEA personnel under threat of disciplinary action in an administrative investigation cannot be used against that individual in subsequent criminal proceedings, consistent with Garrity v. New Jersey, 385 U.S. 493 (1967).

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

XIV. COMPLAINT PROCEDURES

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

XV. CIVIL RIGHTS STANDARDS

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

Participating LEA 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 LEA as needed.

XVI. STEERING COMMITTEE

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

XVII. COMMUNITY OUTREACH

The LEA may, at its discretion, engage in community outreach with individuals and organizations expressing an interest in this MOA. ICE may participate in such outreach upon the LEA's request.

XVIII. RELATIONS WITH THE NEWS MEDIA

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

The LEA hereby agrees to coordinate with ICE before releasing information to the media regarding actions taken under this MOA. The points of contact for ICE and CCSO for this purpose are identified in Appendix C.

XIX. MODIFICATION OF THIS MOA

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

XX. DURATION AND TERMINATION OF THIS MOA

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

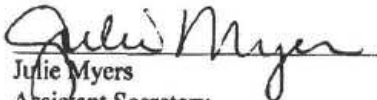
Either party, upon written or oral notice to the other party, may temporarily suspend activities under this MOA when resource constraints or competing priorities necessitate. Notice of termination or suspension by ICE shall be given to the Sheriff of Collier County. Notice of termination or suspension by CCSO shall be given to the ICE Special Agent in Charge and the ICE Field Office Director in Washington, DC.

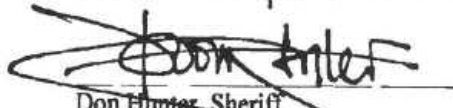
Except for the provisions contained in Section XIII, this MOA does not, is not intended to, shall not be construed to, and may not be relied upon to create, any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

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

Date: 8/6/07

Date: 29 MAY 07


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


Don Hunter, Sheriff
Collier County Sheriff's Office
3301 Tamiami Trail E. Bldg. J
Naples, FL 34104-4902

POINTS OF CONTACT

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

For CCSO: Don Hunter,
Sheriff of Collier County
Collier County Sheriff's Office
3301 Tamiami Trail E. Bldg. J
Naples, FL 34112-4902
(239) 774-4434

For ICE DRO: Mary F. Loiselle
Field Office Director
Office of Detention and Removal
2675 Prosperity Avenue
Fairfax, VA 22031
(703) 285-6220

For ICE OI: Robert Weber
Special Agent in Charge
2203 North Lois Avenue, Suite 300
Tampa, Fl 33607
(813) 357-7000

APPENDIX B
COMPLAINT PROCEDURE

This MOA is an agreement between DHS/ICE and the Collier County Sheriff's Office, hereinafter referred to as the "Law Enforcement Agency" (LEA), in which selected LEA personnel are authorized to perform immigration enforcement duties in specific situations under Federal authority. As such, the training, supervision, and performance of participating LEA personnel pursuant to the MOA, as well as the protections for individuals' 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, and certification of certain LEA 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 LEA and be handled in accordance with the LEA Manual of Policy and Procedures. The LEA will also handle complaints filed against personnel who may exercise immigration authority, but who are not designated and certified under this MOA. The number and type of the latter complaints will be monitored by the Steering Committee established under Section XVI of the MOA.

In order to simplify the process for the public, complaints against participating LEA personnel relating to their immigration enforcement can be reported in a number of ways. The ICE Headquarters Office of Professional Responsibility (OPR) and the LEA's Internal Affairs Division will coordinate complaint receipt and investigation.

The ICE OPR will forward complaints to the Department of Homeland Security's Office of Inspector General (DHS OIG) as appropriate for review, and ensure notification as necessary to the U.S. Department of Justice Civil Rights Division (DOJ CRD). The ICE OPR will coordinate complaints related to participating personnel with the LEA Internal Affairs Division as detailed below. Should circumstances warrant investigation of a complaint by the DHS OIG or the DOJ CRD, this will not preclude the DHS OIG, DOJ CRD, or ICE OPR from conducting the investigation in coordination with the LEA's Internal Affairs Division, when appropriate.

The ICE OPR will adhere to established procedures relating to reporting and resolving allegations of employee misconduct, and the LEA's Internal Affairs Division will follow applicable LEA policies and procedures, personnel rules, Arizona statutes, and collective bargaining agreement requirements.

1. Complaint Reporting Procedures

Complaint reporting procedures shall be disseminated as appropriate by the LEA within facilities under its jurisdiction (in English and other languages as appropriate) in order to ensure that individuals are aware of the availability of such procedures.

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

Complaints can be reported to federal authorities as follows:

- A. Telephonically to the ICE OPR at the Joint Intake Center (JIC) in Washington, D.C. at the toll-free number 1-877-246-8253; or
- B. Telephonically to the Resident Agent in Charge of the ICE OPR office in Tampa, Fl; or
- C. Via mail as follows:

U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
Office of Professional Responsibility
425 I Street, NW
Room 3260
Washington, D.C. 20536

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

- A. The LEA Internal Affairs Division; or
- B. The supervisor of any participating LEA personnel; or

LEA's Administrative Unit as follows;
Major Jim Bloom
Collier County Sheriff's Office
3301 East Tamiami Trail, Bldg. J
Naples, Fl 34112-4902

- C. The LEA Internal Affairs Division as follows:
Jim Williams, Chief of Investigations
3301 Tamiami Trail E. Bldg. J
Naples, FL 34112-4902
(239) 774-4434

2. Review of Complaints

All complaints (written or oral) reported to the LEA directly, which involve activities connected to immigration enforcement activities authorized under this MOA, will be reported to the ICE OPR. The ICE OPR will verify participating personnel status under the MOA with the assistance of the ICE Special Agent in Charge and the ICE Field Office Director in Washington, DC. Complaints received by any ICE entity will be reported directly to the ICE OPR as per existing ICE policies and procedures.

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

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

3. Complaint Resolution Procedures

Upon receipt of any complaint, the ICE OPR will undertake a complete review of each complaint in accordance with existing ICE allegation criteria and reporting requirements. As stated above, the ICE OPR will adhere to existing ICE reporting requirements as they relate to the DHS OIG and/or the DOJ CRD. Complaints will be resolved using the existing procedures, supplemented as follows:

A. Referral of Complaints to LEA Administrative Investigations Unit.

The ICE OPR will refer complaints, as appropriate, involving LEA personnel to the LEA's Administrative Investigations Unit for resolution. The Major Jim Bloom will inform ICE OPR of the disposition and resolution of any complaints referred by ICE OPR.

B. Interim Action Pending Complaint Resolution

- Whenever any participating LEA personnel are under investigation and subject to interrogation by the LEA for any reason that could lead to disciplinary action, demotion, or dismissal, the policy requirements of the Collier County Sheriff's Office shall be honored. If appropriate, an individual may be removed from participation in the activities covered under the MOA pending resolution of an inquiry.

C. Time Parameters for Resolution of Complaints

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

D. Notification of Resolution of a Complaint

ICE OPR will coordinate with the LEA's Administrative Unit to ensure notification as appropriate to the subject(s) of a complaint regarding the resolution of the complaint.

APPENDIX C

PUBLIC INFORMATION POINTS OF CONTACT

Pursuant to Section XVIII of this MOA, the signatories agree to coordinate any release of information to the media regarding actions taken under this MOA. The points of contact for coordinating such activities are:

For CCSO:

Jim Bloom, Chief of Operations
Sheriff of Collier County
Collier County Sheriff's Office
3301 Tamiami Trail E. Bldg. J
Naples, FL 34112-4902
(239) 530-9636

Chris Freeman, Captain of Corrections
Sheriff of Collier County
Collier County Sheriff's Office
3301 Tamiami Trail E. Bldg. J
Naples, FL 34112-4902
(239) 793-9352


For ICE:


Public Information Officer
Barbara Gonzalez
Office of Public Affairs and Internal Communication
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
8075 N.W. 53rd Street
Miami, FL 33166
(305) 970-1294

APPENDIX D

Mesa, Ariz.
Police Field Manual,
Subject: Arrest—Undocumented
Foreign Nationals

<p>Mesa Police Field Manual</p> <p>Approved: <i>Chief Dennis L. Donna</i></p>	<p>Subject:</p> <p style="text-align: center;">Arrest - Undocumented Foreign Nationals</p>	
<p>Effective: March 18, 2004</p>	<p>Chapter: Arrest</p>	<p>Page: 1</p>

<p>General Guidelines</p>	<p>The Mesa Police Department recognizes and values the diversity of the community it serves.</p> <ul style="list-style-type: none"> • The purpose of this policy is to ensure the safety and well being of all persons, regardless of their immigration status. • The Mesa Police Department believes that all community members should not hesitate to request police services because of their immigration status. • The responsibility for the enforcement of Federal Immigration laws rests with the Bureau of Immigration and Customs Enforcement (ICE). <ul style="list-style-type: none"> • The Mesa Police Department will not participate in enforcement of federal immigration laws. • The Mesa Police Department will take appropriate actions for violations of city or state criminal codes and /or respond to any immediate threat to officer safety encountered during any ICE assistance. • The term “undocumented person(s)” in this order is defined as undocumented foreign national(s). • Do not stop persons for the sole purpose of determining immigration status. • Do not arrest or detain a person when the only violation is an infraction of a federal immigration law. • Do not contact ICE for the sole purpose of language interpretation.
<p>Initial Response</p>	<p>Determine if a violation of city or state criminal codes has occurred.</p> <ul style="list-style-type: none"> • Determine if a welfare check is necessary or appropriate. • Notify the patrol lieutenant of any calls of kidnapping, smuggling, etc. <p style="text-align: right;"></p>

	<p>Also notify the patrol lieutenant, if during the course of taking other law enforcement actions voluntary information is developed which leads to the reasonable suspicion that:</p> <ul style="list-style-type: none">• A house or building being used as a transfer or holding facility for smuggling undocumented persons.• Vehicles are being used in smuggling undocumented persons. <p>Do not notify the patrol lieutenant of undocumented persons under the following conditions:</p> <ul style="list-style-type: none">• They are victims and/or witnesses of a crime or a family disturbance.• The enforcement of minor traffic offenses.• When the person(s) are seeking medical treatment.
<p>Patrol Lieutenant Responsibilities</p>	<ul style="list-style-type: none">• Determine the need for additional response from specialized department units such as CID, Intelligence, etc.• See FLD 1410 for guidelines on callout of specialized units.• Notify ICE as needed using human smuggling/narcotics smuggling law enforcement contact number 1-800-973-2867.• The ICE Liaison will attend ICE law enforcement quarterly meetings and disperse pertinent information to all lieutenants as needed.
<p>ICE Liaison</p>	<ul style="list-style-type: none">• A patrol lieutenant will be appointed as a liaison with ICE.• The ICE Liaison will attend ICE law enforcement quarterly meetings and disperse all pertinent information to all lieutenants as needed. <p style="text-align: right;"></p>

ICE NOTIFICATION UPON ARREST	
Felony or Misdemeanor (other than minor traffic violation) Where Suspect is Arrested and Booked	<ul style="list-style-type: none"> • May notify ICE. • An ICE officer may authorize a hold for ICE. • Do not place an ICE hold on an undocumented person without the request and approval of an ICE officer.
Minor Traffic Violation	Do not notify ICE.
Misdemeanor Cite and Release	<ul style="list-style-type: none"> • May be used for eligible person. • Do not notify ICE if the person is to be cited and released.
Released from Police Custody (not booked)	Do not notify ICE.
Public Information Officer (PIO) Notification	Notify the Public Information Officer (PIO) as soon as possible of requests for on-scene assistance by ICE, or other high-profile incidents involving undocumented persons.
Incidents Involving Juveniles	Process juveniles contacted, arrested, or detained for suspected criminal activity without regard to immigration status.
Community Referral Assistance	<ul style="list-style-type: none"> • Officers may refer community members to Chicanos Por La Causa and/or Friendly House for assistance with immigration, housing, social services, etc. • Members may contact Communications or Victim Services for contact information. • For additional referral services contact Community Information & Referrals at (602) 263-8856.

