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**MEMORANDUM OF AGREEMENT
BETWEEN
UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES
AND
UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT
ON THE ISSUANCE OF NOTICES TO APPEAR
TO ALIENS ENCOUNTERED DURING AN ADJUDICATION**

1. **PARTIES.** The parties to this Memorandum of Agreement (MOA) are U.S. Citizenship and Immigration Services (USCIS) and U.S. Immigration and Customs Enforcement (ICE), two components of the U.S. Department of Homeland Security (DHS).
2. **AUTHORITY.** In section 2(N) of DHS Delegation Number 0150.1, Delegation to the Bureau of Citizenship and Immigration Services, and in section 2(K) of DHS Delegation Number 7030, Delegation of Authority to the Assistant Secretary for the Bureau of Immigration and Customs Enforcement, USCIS and ICE received concurrent authority to issue notices to appear (NTAs) under the Immigration and Nationality Act (INA). In their respective delegations, USCIS and ICE were further directed by the Secretary of Homeland Security to coordinate the concurrent responsibilities provided under these Delegations. This MOA outlines the coordination between USCIS and ICE, as authorized by these Delegations.
3. **PURPOSE.** The purpose of this MOA is to set forth when each party will make the determination whether or not to issue an NTA or other charging document to an alien who is amenable to removal proceedings and who is encountered during the process of a USCIS adjudication.
4. **SCOPE OF AGREEMENT:** This MOA is limited in scope to the specific responsibilities described herein and will apply to cases adjudicated by USCIS on or after October 1, 2006. Additionally, this MOA does not apply to cases identified by either USCIS or ICE as involving an alien described in sections 237(a)(4) or 212(a)(3) of the INA, relating to national security grounds.
5. **DEFINITION.**

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An EGREGIOUS PUBLIC SAFETY CASE is one where information indicates the alien is under investigation for, has been arrested for (without disposition), or has been convicted of, any of the following:

- a. Murder, rape, or sexual abuse of a minor as listed in §101(a)(43)(A) of the Immigration and Nationality Act (INA).
- b. Illicit trafficking in firearms or destructive devices as defined in §101(a)(43)(C) of the INA.
- c. Offenses relating to explosive materials or firearms as defined in §101(a)(43)(E) of the INA.
- d. Crimes of violence for which the term of imprisonment imposed is at least one year as defined in §101(a)(43)(F) of the INA.
- e. An offense relating to the demand for or receipt of ransom as defined in §101(a)(43)(H) of the INA.
- f. An offense relating to child pornography as defined in §101(a)(43)(I) of the INA.
- g. An offense relating to peonage, slavery, involuntary servitude, and trafficking in persons as defined in §101(a)(43)(K)(iii) of the INA.
- h. An offense relating to alien smuggling as described in §101(a)(43)(N) of the INA.
- i. Human Rights Violators, known or suspected street gang members, or Interpol hits.
- j. Re-entry after an order of exclusion, deportation or removal subsequent to conviction for a felony where a Form I-212, Application for Permission to Reapply for Admission into the U.S. after Deportation or Removal, has *not* been approved.
- k. Additional types of cases can be added based on local criteria as agreed upon by the ICE Special Agent in Charge (SAC), Office of Detention and Removal, Field Office Director (FOD), and the USCIS District Director for field cases or by the appropriate USCIS Fraud Detection Unit (FDU) and the ICE Benefit Fraud Unit (BFU) for center cases.

6. USCIS RESPONSIBILITIES

- a. This MOA does not change existing procedures relating to USCIS Asylum Division's issuance of NTAs for affirmative asylum cases, credible fear referrals or NACARA section 203 referrals. Additionally, this MOA does not change USCIS' existing procedures for issuing NTAs in Temporary Protected Status cases. USCIS may change those procedures after consultation with the ICE Point of Contact (POC)

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identified in paragraph 8, but such changes will not be considered to be a modification of this MOA.

- b. USCIS will refer all Egregious Public Safety Cases in its centers to the appropriate ICE BFU via a Referral for Investigation (RFI) prior to the completion of the USCIS adjudication. The RFI will include any relevant attachments (e.g. copy of the rap sheet). Similarly, USCIS will refer via an RFI all Egregious Public Safety Cases in the field to the local ICE SAC or designated POC with concurrent electronic notification to the ICE BFU prior to completion of the USCIS adjudication. Files (A-File, T-File, and or the receipt file) in the possession of the referring USCIS office or center will also be sent to the appropriate ICE office upon request.
- c. Upon forwarding an Egregious Public Safety RFI, to the ICE SAC, designated POC or ICE BFU as described in paragraph b, USCIS will suspend adjudication for 60 days or until ICE provides notification of its action on the case, whichever is earlier. If no request is received from ICE in the 60 days, USCIS may resume adjudication of the case. If ICE requests the file anytime before adjudication, USCIS will consult with ICE prior to approving the case. In all referred cases, USCIS is to immediately notify the ICE SAC, designated POC or the ICE BFU, as appropriate, of any pending federal litigation so to coordinate how the cases will be handled.
- d. USCIS will refer, via RFI and the accompanying file, if in the possession of the referring USCIS office or center, all other cases in which an alien is inadmissible or removable from the United States based upon conviction of a criminal offense not listed under the definition of Egregious Public Safety Case in paragraph 5 of this agreement to ICE Detention and Removal (DRO). The RFIs and files in possession of the referring USCIS office or center will be forwarded upon completion of the USCIS adjudication to the appropriate Field Office Director (FOD) or designated POC. USCIS will also concurrently transmit a copy of the RFI to the HQ DRO Criminal Alien Division for statistical monitoring purposes. All referred cases to the FOD or designated POC is to include any previously obtained certified conviction records.
- e. USCIS will issue NTAs after a case has been denied where an NTA is prescribed by regulation. This includes, but may not be limited to, Form I-751, Petition to Remove Conditions on Residence; Form I-829, Petition by Entrepreneur to Remove Conditions; and Form I-817, Application for Family Unity Benefits. See 8 CFR 216.3(a) and 8 CFR

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236.14(c). USCIS will also issue an NTA after termination of an alien's refugee status by a District Director. See 8 CFR 207.9.

- f. USCIS will issue NTAs in cases in which fraud is, wholly or in part, a basis for denying the adjudication.
- g. In all other cases in which an alien becomes amenable to removal proceedings based upon a denial of an application or benefit, USCIS will issue an NTA or otherwise exercise prosecutorial discretion.

7. ICE RESPONSIBILITIES

a. The ICE SAC or ICE BFU to which USCIS has referred an Egregious Public Safety case will electronically notify the referring USCIS POC within 60 days of the referral if ICE intends to issue an NTA, return the case, or if additional time is needed for ICE to complete an investigation. If ICE continues to investigate the case after 60 days, ICE will respond in a timely manner to any USCIS inquiries about the status of the case.

b. Once USCIS has completed its adjudication of an application, petition and/or waiver in a non-egregious criminal case and has referred the file, if in the possession of the referring USCIS office or center, to the appropriate DRO FOD or designated POC, the DRO FOD or designated POC will determine whether an NTA or other charging document is appropriate, and will electronically notify the USCIS Office of Fraud and Detection and National Security of any action taken. If the DRO FOD or designated POC determines that the alien is not removable based on a criminal ground, DRO shall issue an NTA on other grounds or shall document in the file the finding that no criminal ground of removal exists and return the file to the referring USCIS office.

8. POINTS OF CONTACT. The ICE/OI Point of Contact for purposes of notification under this agreement for matters not otherwise specified is the Identity and Benefit Fraud Unit. The ICE/DRO POC for purposes of notification under this agreement for matters not otherwise specified is the HQ DRO Criminal Alien Division. The USCIS POC for purposes of notification under this agreement for matters not otherwise specified is the Office of Fraud Detection and National Security.

9. OTHER PROVISIONS. Nothing in this MOA is intended to conflict with existing laws, regulations, or DHS directives. If a term of this MOA is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this MOA shall remain in full force and effect.

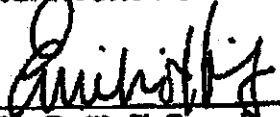
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10. **EFFECTIVE DATE.** The terms of this MOA will become effective upon signature of this document.
11. **MODIFICATIONS.** This MOA may be modified upon the mutual written consent of the parties.
12. **REVIEW.** The parties agree to undertake a review of the MOA within six (6) months of the effective date under paragraph 4 to determine whether any modifications are necessary to more effectively accomplish the goals of the MOA. Failure to conduct a review, however, will not result in the termination of this MOA.
13. **TERMINATION.** The terms of this MOA, and any subsequent modifications consented to by both parties, will remain in effect unless terminated as provided herein. Either party, upon 60 days written notice to the other party, may terminate this MOA.

SIGNATORY AUTHORITIES:


Dr. Emilio T. Gonzalez
Director
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security

6/20/06
Date


Julie L. Myers
Assistant Secretary
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

6/15/06
Date