

ICE claim <sup>1</sup>	Maricopa MOA (2/24/07)	New Memorandum of Agreement (7/10/09)
<p>“ICE priorities now incorporated into the MOA”</p>	<p>Explained that “ICE ... will assess on a case-by-case basis the appropriate removal vehicle to be employed ... ICE may exercise ... discretion by declining to detain aliens whose detention is not mandated by federal statute.” (4)</p>	<p>Does include definitions of three levels of “priorities,” but states only that “resources should be prioritized to the following levels.” It does not provide any mechanism for ensuring “prioritization,” such as comparing arrest information to the priority levels or requiring the agency to show that its policies and procedures communicate and implement an effective prioritization system. Plainly does not prevent or discourage arrests for “low-priority” offenses. (Appx. D, 17)</p>
<p>“Purpose of 287(g) authority is now provided in MOA.”</p>	<p>“It is the intent of the parties that these delegated authorities will enable the LEA to identify and process immigration violators in Maricopa County consistent with the terms of this MOA. ... The purpose of this MOA is to set forth the terms and conditions pursuant to which selected LEA personnel ... will be nominated, trained, and thereafter perform certain functions of an immigration officer ....” (1)</p>	<p>“It is the intent of the parties that these delegated authorities will enable the AGENCY to identify and process immigration violators and conduct criminal investigations under ICE supervision, as detailed herein, within the confines of the AGENCY’S AREA OF RESPONSIBILITY .. This MOA sets forth the terms and conditions pursuant to which selected AGENCY personnel ... will be nominated, trained, and approved by ICE to perform certain functions of an immigration officer ....” (1)</p> <p>Includes new language saying that “The purpose of this collaboration is to enhance the safety and security of communities by focusing resources on identifying and processing for removal criminal aliens who pose a threat to public safety or a danger to the community.” This language does</p>

<sup>1</sup> Refers to claims in ICE document entitled “2009 287g side-by-side.”

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<p>“Expressly limits the law enforcement agency’s 287(g) authority to the confines of their area of responsibility”</p>	<p>Already limited delegated authorities to “Maricopa County,” as reflected above.</p>	<p>not have any apparent operative effect. “within the confines of the AGENCY’S AREA OF RESPONSIBILITY” (1)</p>
<p>Eliminates “[s]eparate templates for both task force and jail enforcement models”</p>	<p>Deals with both “correction setting” and “field setting” (7).</p>	<p>Also addresses both settings (18-23).</p>
<p>“Federal civil rights not addressed” in old MOA</p>	<p>“Participating LEA personnel ... 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.” (9)</p>	<p>“Participating AGENCY personnel are bound by all Federal civil rights laws, regulations, guidance relating to non-discrimination including the U.S. Department of Justice ‘Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies’ dated June 2003 and Title VI of the Civil Rights Act of 1964, as amended, 42. U.S.C. 2000 et. seq., which prohibits discrimination based upon race, color, or national origin (including limited English proficiency) in any program or activity receiving Federal financial assistance.” (8)</p>
<p>“Interpretation services not addressed in previous MOA”</p>	<p>“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.” (9)</p>	<p>“Participating AGENCY 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 AGENCY, as needed.” (8)</p> <p>“The AGENCY will maintain a list of qualified interpreters or companies it contracts with to provide such interpreters. Participating law</p>

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		<p>enforcement personnel will be instructed on the proper administrative procedures to follow to obtain the services of an interpreter. A qualified interpreter means an interpreter who can interpret effectively, accurately, and impartially, using any specialized vocabulary. If an interpreter is used when a designated officer is performing functions under this MOA, the interpreter must be identified, by name, in records.” (8)</p>
<p>Old MOA “[d]id not clearly state where complaints should be forwarded”</p>	<p>“In order to simplify the process for the public, complaints ... can be reported in a number of ways. The ICE [OPR] and the LEA’s Internal Affairs Division will coordinate complaint receipt and investigation.” (12)</p> <p>Gives toll-free number for ICE OPR at HQ; tel no for ICE OPR office in Tuscon, and mail address of ICE HQ OPR. (13)</p> <p>Also gives contact info for Maricopa IAD. (13)</p> <p>“[T]he LEA shall, to the extent allowed by state law, immediately notify ICE of the existence and nature of [any relevant] complaint. The resolution of the complaint shall also be promptly reported to ICE.” (8)</p>	<p>“In order to simplify the process for the public, complaints against participating AGENCY personnel ... can be reported in the following manner ....” (13)</p> <p>Provides toll-free number for DHS OIG, toll-free number and email for ICE OPR at HQ and mail address of ICE HQ OPR. (14)</p> <p>“[T]he AGENCY shall, to the extent allowed by State law, immediately notify ICE of the existence and nature of [any relevant] complaint or allegation. The results of any internal investigation or inquiry connected to the complaint or allegation and the resolution of the complaint shall also be promptly reported to ICE.” (13)</p>

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<p>“Pursuing charges to completion was not addressed” in previous MOA</p>	<p>“The LEA is expected to pursue to completion prosecution of the state or local charges that caused the individual to be taken into custody.” (4)</p>	<p>“The AGENCY is expected to pursue to completion all criminal charges that caused the alien to be taken into custody and over which the AGENCY has jurisdiction.” (2)</p>
<p>Performance of duties by the law enforcement agency was not addressed</p>	<p>“Either party, upon written notice to the other party, may terminate the MOA at any time.” (10)</p>	<p>“During the MOA’s effective period, either party, upon written notice to the other party, may terminate the MOA at any time.” (10)</p> <p>Following new provision seems aimed at <i>underenforcement</i>, and does not actually require any corrective action.</p> <p>“...Upon a good faith determination that the AGENCY is not fulfilling its duties, ICE shall notify the AGENCY, in writing, and inform the AGENCY that it has 90 days to demonstrate a continued need for 287(g) program services. If this continued need is not demonstrated by the AGENCY, the authorities and resources given to the AGENCY pursuant to this MOA will be terminated or suspended. Upon a subsequent demonstration of need, all costs to reinstate access to such authorities and/or program services will be incurred by the AGENCY.” (10)</p>
<p>Previous MOA “[d]id not provide additional detail around criteria for accepting candidates”</p>	<p>“For each candidate, ICE may request any information necessary for a background check and to evaluate a candidate’s suitability ... All candidates must be U.S. 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</p>	<p>“All candidates must be United States citizens. The AGENCY is responsible for conducting a criminal background check within the last five years for all nominated candidates. ... “ (3)</p> <p>“In addition to the AGENCY background check, ICE will conduct an independent background check for each candidate. This background check</p>

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	federal security clearances.” (4)	<p>requires all candidates to complete a background questionnaire. The questionnaire requires, but is not limited to, the submission of fingerprints, a personal history questionnaire, and the candidate’s disciplinary history (including allegations of excessive force or discriminatory action). “ (3)</p> <p>Task force participants “should have a minimum of one year of law enforcement experience.” (21). Detention participants “shall have specific experience that should consist of having supervised inmates.” (23).</p>
“Operations plan approval not required” under old MOA	“In the field setting, participating MSCO deputies will contact an ICE duty officer at the time of exercising the authority in this MOA for guidance.” (7)	Task force only: “Prior to an AGENCY conducting any enforcement operation that will involve the use of its 287(g) delegation of authority, the AGENCY must provide the ICE supervisor with a copy of the operations plan, and the SAC/FOD must concur and approve with the plan prior to it being initiated.” (20)

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New MOA explicitly does not require data collection, whereas old MOA placed a general obligation on agency to “track[] and maintain[] accurate data and statistical information”	“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.” (7)	“ICE does not require the AGENCY to provide statistical or arrest data above what is entered into ENFORCE; however, ICE reserves the right to request the AGENCY provide specific tracking data and/or any information, documents, or evidence related to the circumstances of a particular alien’s arrest.” (6)
New MOA eliminates steering committee and	“The ICE Special Agent in Charge, the ICE Field Office Director, and the Sheriff of Maricopa	No longer refers to a “steering committee,” but instead simply periodic meetings between the

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authorizes exclusion of civilians from program reviews.	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” (9)	principals. “When necessary, ICE and the AGENCY may limit the participation of these meetings in regards to non-law enforcement personnel.” (9)
New MOA increases list of powers granted to task force officers by adding authority to execute search warrants and to issue arrest warrants (an especially inappropriate power for police officers to possess)		Powers granted include:  <ul style="list-style-type: none"> <li>• The power and authority to execute search warrants pursuant to INA § 287(a) and 8 C.F.R. § 287.5(e)(1);</li> <li>• The power and authority to issue arrest warrants for immigration violations pursuant to INA § 287(a) and 8 C.F.R. § 287.5(e)(2)” (19)</li> </ul>
New MOA attempts to shield information from public access or scrutiny by declaring that a very broadly defined group of documents “shall not be considered public records” and requiring agencies to get ICE approval before releasing information about the program or its implementation	“The LEA hereby agrees to coordinate with ICE before releasing information to the media regarding actions taken under this MOA.” (10)	“The AGENCY hereby agrees to coordinate with ICE prior to releasing any information relating to, or exchanged under, this MOA, including any SOPs developed for the implementation of this MOA. Information obtained or developed as a result of this MOA is under the control of ICE and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations, and executive orders. Insofar as any documents created by the AGENCY contain information developed or obtained as a result of this MOA, such documents shall not be considered public records.  The release of statistical information regarding the 287(g) program must be coordinated with the

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		<p>ICE Office of Public Affairs. The AGENCY hereby agrees to coordinate with ICE regarding information to be released to the media regarding actions taken under this MOA. All contact with the media involving investigations conducted under this MOA by Task Force Officers (TFO) will be done pursuant to ICE policy. The points of contact for ICE and the AGENCY for this purpose are identified in Appendix C.” (9)</p>