

MEMORANDUM OF AGREEMENT
BETWEEN
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
THE U.S. DEPARTMENT OF HOMELAND SECURITY
AND
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
THE U.S. DEPARTMENT OF HOMELAND SECURITY
REGARDING
E-VERIFY PROGRAM INFORMATION SHARING

1. PARTIES

The parties to this Memorandum of Agreement (MOA) are the U.S. Department of Homeland Security (DHS) components: U.S. Citizenship and Immigration Services (USCIS), and U.S. Immigration and Customs Enforcement (ICE).

2. AUTHORITY

This MOA is entered into in accordance with the following authorities:

- The Homeland Security Act of 2002 (Pub. L. No. 107-296)
- DHS Management Directive 0450.1, Memoranda of Understanding and Memoranda of Agreement
- 8 U.S.C. § 1324a
- 18 U.S.C. § 1546(b)(3)
- Pub. L. 104-208, Div. C., Title IV, Subtitle A, §§ 401-05, as amended (8 U.S.C. § 1324a note)
- 8 C.F.R. Part 274a
- DHS Delegation Number 0150.1, Delegation to the Bureau of Citizenship and Immigration Services

- DHS Delegation Number 7030.2, Delegation of Authority to the Assistant Secretary for the Bureau of Immigration and Customs Enforcement

3. PURPOSE

- a. DHS Delegation Number 0150.1, Delegation to the Bureau of Citizenship and Immigration Services, and DHS Delegation Number 7030.2, Delegation of Authority to the Assistant Secretary for the Bureau of Immigration and Customs Enforcement, provided USCIS and ICE, respectively, with concurrent and/or related authorities to administer and enforce employment authorization verification under section 274A of the Immigration and Nationality Act (INA) (8 U.S.C. § 1324) and other applicable law. In their respective delegations, USCIS and ICE were directed by the Secretary of Homeland Security to coordinate their responsibilities with each other.
- b. The purpose of this MOA is to outline the coordination and management of referrals between USCIS Verification Division and ICE regarding the misuse, abuse or fraudulent use of the E-Verify Program and ICE requests to USCIS for Verification Information System (VIS) data with regard to ongoing ICE investigations.

4. USCIS RESPONSIBILITIES

- a. The USCIS Verification Division has authority over and is responsible for administering, monitoring, and assuring program integrity and compliance for lawful, proper, and nondiscriminatory verification of employment authorization under E-Verify. E-Verify (formerly known as the Basic Pilot/Employment Eligibility Verification Program) is an Internet-based system, operated by DHS in partnership with the Social Security Administration that allows participating employers to electronically verify the employment authorization status of their newly hired employees.
- b. The USCIS Verification Division will designate a point of contact who will ensure cooperation, communication, and coordination with ICE.
- c. The USCIS Verification Division will identify and pursue suspected employer and employee misuse, abuse, and fraudulent use of E-Verify, and will track and manage all such cases.
- d. The USCIS Verification Division, at its discretion, will refer suspected employer and employee misuse, abuse, and fraudulent use of E-Verify to ICE for investigative consideration concerning matters within ICE's jurisdiction. In particular, the USCIS Verification Division will refer significant cases where it suspects an employer of a specific incident, or a pattern or practice of:

- 1) Misuse, abuse, and/or fraudulent use of E-Verify occurring at critical infrastructure sites, designated under current Homeland Security directives, Presidential Directives or other Executive Orders (Critical Infrastructure Protection Referrals);
 - 2) Violations regarding the employment of unauthorized aliens;
 - 3) Criminal activity (Criminal Employer Referrals), such as alien smuggling, harboring illegal aliens, domestic transporting, encouraging or inducing conspiracy or aiding and abetting as set forth in 8 U.S.C. §§ 1324 and 1324a(f); or document fraud, 18 U.S.C. § 1546(b)(3); or identity and aggravated identity theft, 18 U.S.C. §§ 1028, 1028A;
 - 4) Failure to use E-Verify for all employees as required under the E-Verify Memorandum of Understanding; or
 - 5) Retaining employees after an E-Verify Final Nonconfirmation.
- e. Where fraud or other activity of the type articulated in paragraph 4(d) is suspected, until such time as a criminal investigation or administrative inquiry has been initiated through the process set forth in this MOA, both the USCIS Verification Division and ICE may pursue compliance activities against such employers or employees. If ICE provides written notice to USCIS after the USCIS Verification Division referral that ICE is conducting an investigation on a related, or the specific referred matter, and explicitly requests that the USCIS Verification Division limit or suspend its compliance inquiries and activities, the USCIS Verification Division will immediately comply and coordinate its activities relating to such matter with ICE.
- f. The USCIS Verification Division will refer cases of suspected misuse, abuse, and fraud (as described in 4(d)) to ICE via the ICE Office of Investigations (OI), Headquarters Worksite Enforcement Unit (WSE) Point of Contact (POC). The USCIS Verification Division will track and manage all referrals. The USCIS Verification Division will continue to cooperate with ICE throughout the referral process and afterward as requested, as USCIS Verification Division resources permit.
- g. If the ICE WSE provides written notice declining a USCIS Verification Division referral, the USCIS Verification Division may conduct further inquiry and exercise its authority over proper use of E-Verify. If the administrative inquiry by the USCIS Verification Division discloses additional criminal or administrative violations of the types noted above in paragraph 4(d) beyond those provided to ICE in the initial referral, the USCIS Verification Division will consult with ICE to determine if the

subsequent information warrants resubmission for investigation by the ICE WSE.

- h. Consistent with applicable laws, regulations, and policies, and the availability of USCIS Verification Division resources, the USCIS Verification Division will commit personnel and resources sufficient to support this MOA.
- i. The USCIS Verification Division will provide ICE VIS information requested with regard to ongoing administrative and criminal investigations pursuant to ICE's authority, to the extent delegated by the Secretary, to enforce the immigration laws (as defined by 8 U.S.C. § 1101(a)(17)) or Federal criminal law, as long as the investigation involves potential violations of law relating, entirely or in part, to the integrity or operation of E-Verify (for example, and not limited to: document fraud by employers or employees of an E-Verify employer, employment of unauthorized workers by an E-Verify employer, failure by an E-Verify employer to use the VIS systems for lawful purposes or in a lawful manner to verify work authorization, and deliberate misuse of the E-Verify program to circumvent immigration laws). A request by ICE for VIS information shall be construed as a determination on the part of ICE that such request satisfies this standard. If ICE requests VIS information for another purpose, ICE shall so inform the USCIS Verification Division and the USCIS Verification Division will consider the request and respond appropriately pursuant to relevant law and policy.

5. ICE RESPONSIBILITIES

- a. The primary ICE component responsible for all E-Verify issues is the ICE Office of Investigations Worksite Enforcement Unit (OI WSE). The WSE will coordinate all E-Verify referrals, and communication between USCIS and ICE.
- b. The WSE will designate a WSE POC to receive referrals from the USCIS Verification Division. The WSE POC will review the referrals noted in paragraph 4(d) and determine whether to accept and/or refer the information to the appropriate ICE OI component or field office, or to decline and return the referral to the USCIS Verification Division.
- c. As referenced in paragraph 4(e), in instances where fraud or other unlawful activity is suspected, and until such time as a criminal investigation or administrative inquiry has been initiated through the process set forth in this MOA, both the USCIS Verification Division and ICE may pursue compliance activities against such employers and/or employees. In instances where ICE has accepted a referral from the USCIS Verification Division, ICE will advise the USCIS Verification Division in writing that ICE is conducting an investigation on the

specified or a related matter, and will explicitly request that the USCIS Verification Division limit or suspend its compliance inquiries and activities. In these instances, the USCIS Verification Division will immediately comply and coordinate all future activities with ICE.

- d. The WSE POC will provide written notice to the USCIS Verification Division within 60 days of receipt of a referral on whether ICE has elected to accept or decline the referral.
- e. At the conclusion of the investigation, the WSE POC will, for each referral received from the USCIS Verification Division, provide a written case closure notification, to include criminal arrest, indictment, conviction and/or administrative arrest or administrative fine information. The WSE POC will also indicate in the notification whether or not this information should be deemed “law enforcement sensitive” and whether the information may be released outside DHS.
- f. Consistent with applicable laws, regulations, and policies, and the availability of ICE resources, ICE will commit personnel and resources sufficient to support this MOA.
- g. If ICE becomes aware of significant information relating to suspected employer or employee misuse, abuse, or fraudulent use of E-Verify, ICE will share that information with the USCIS Verification Division unless to do so would compromise an ICE investigation or enforcement activity. The USCIS Verification Division may use such information for compliance inquiries and activities unless ICE explicitly requests that the USCIS Verification Division limit its action on the information, in which case USCIS will comply and coordinate its activities with ICE.

6. POINTS OF CONTACT

- a. The ICE POC is: Kevin Sibley, Unit Chief, Worksite Enforcement Unit, a designee, or a successor.
- b. The USCIS Verification Division POC is: Elaine I. Chan, Acting Chief, USCIS Verification Division, Monitoring and Compliance Branch, a designee, or a successor.

7. EXCHANGE AND DISCLOSURE OF INFORMATION

- a. All information exchanged between USCIS Verification Division and ICE under this MOA will be in accordance with applicable laws, regulations, and policies.
- b. All information exchanged between USCIS Verification Division and ICE under this MOA will be done only through the POCs identified above, their designees, or successors.

- c. USCIS Verification Division will not disclose to third agencies any information received from ICE under this MOA without first obtaining authorization from ICE. Likewise, ICE will not disclose to third agencies any information received from USCIS Verification Division under this MOA without first obtaining authorization from USCIS Verification Division, with the following exceptions:
 - 1) USCIS Verification Division produced sensitive but unclassified information provided to prosecutors or other law enforcement personnel as may be necessary for purposes of investigating and presenting accepted cases for prosecution. ICE will notify USCIS Verification Division in writing of any such disclosures.
 - 2) If the sensitive but unclassified information requested or to be discussed does not belong to USCIS Verification Division, ICE must comply with the originating agency's policy concerning third agency discussion and dissemination.
 - 3) Classified information shall not be further disseminated outside of DHS without prior approval of the originator.
- d. USCIS and ICE agree to maintain reasonable physical, electronic, and procedural safeguards to appropriately protect the information shared under this MOA against loss, theft, or misuse, and unauthorized access, disclosure, copying, use, modification or deletion. The shared information is sensitive but unclassified and shall be handled as "FOR OFFICIAL USE ONLY" (FOUO) information in accordance with DHS Management Directive 11042.1 ("Safeguarding Sensitive but Unclassified (For Official Use Only) Information") and DHS Sensitive Systems Management Directive 4300A.
- e. Personal identifying information shall be protected by administrative, technical and physical safeguards appropriate to the sensitivity of the information, including the encryption of all personal identifying information and all other FOUO information held on portable media such as data, tapes, CDs, or laptops.
- f. To further safeguard the privacy, security, confidentiality, integrity, and availability of the provided information, the parties agree to maintain a log of all information received and sent including the name of the recipient or sender, date and type of data storage used for transfer.

8. OTHER PROVISIONS

- a. Nothing in this MOA is intended to conflict with existing laws, regulations, DHS directives, or other guidance binding on USCIS Verification Division and/or ICE. 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.

- b. This MOA is not intended to create any rights, privileges, or benefits, substantive or procedural, enforceable by any individual or organization against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.

9. EFFECTIVE DATE

This MOA will take effect upon the date of the last signature of the approving officials appearing below.

10. MODIFICATION

This MOA may be modified by the mutual, written consent of the parties.

11. REVIEW

The parties agree to review of the MOA within one (1) year of the effective date 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.

12. TERMINATION

This MOA will remain in effect unless terminated by either party upon sixty (60) days written notice to the other party.

SIGNATORY AUTHORITIES

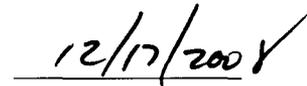


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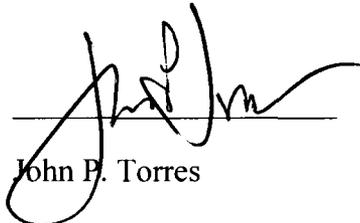
Acting Deputy Director

U.S Citizenship and Immigration Services

Department of Homeland Security



Date

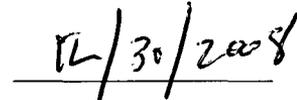


John P. Torres

Acting Assistant Secretary

U.S. Immigration and Customs Enforcement

Department of Homeland Security



Date