

MEMORANDUM OF AGREEMENT
BETWEEN
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
U.S. DEPARTMENT OF HOMELAND SECURITY
AND
CIVIL RIGHTS DIVISON
U.S. DEPARTMENT OF JUSTICE
REGARDING

INFORMATION SHARING AND CASE REFERRAL

1. PARTIES

The parties to this Memorandum of Agreement (MOA) are U.S. Citizenship and Immigration Services (USCIS), a component of the U.S. Department of Homeland Security (DHS), and the Civil Rights Division (CRT) of the U.S. Department of Justice (DOJ). The Parties have the following responsibilities:

a. Civil Rights Division, Office of Special Counsel for Immigration Related Unfair Employment Practices

CRT prosecutes violations of criminal civil rights statutes and enforces federal statutes and executive orders that prohibit, among other things, unlawful discrimination in voting, education, employment, housing, police services, public accommodations and facilities, and federally funded and conducted programs.

The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) is the Section within CRT that is responsible for enforcing the anti-discrimination provision of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b. The categories of discrimination prohibited under the INA are:

1. Citizenship status discrimination: when individuals are rejected for employment, treated adversely in the hiring process, or fired because of their real or perceived citizenship or immigration status, or because of their type of work authorization. U.S. citizens, temporary residents, recent lawful permanent residents, asylees, and refugees are protected from citizenship status discrimination.
2. National origin discrimination: when individuals are rejected for employment, treated adversely in the hiring process, or fired based on their country of origin, ancestry, native language, accent, associations with persons of a particular national

origin, or because they are perceived as looking or sounding “foreign.” All work-authorized individuals are protected from national origin discrimination.

The Equal Employment Opportunity Commission (EEOC) enforces the civil rights protections set forth by Title VII of the Civil Rights Act of 1964 (“Title VII”), which prohibits discrimination on the basis of race, color, sex, religion, and national origin. Title VII covers both intentional and unintentional acts of discrimination in the workplace, including discrimination in hiring, firing, recruitment, promotion, assignment, compensation, and other terms and conditions of employment.

The number of employees that an employer has will dictate whether OSC or the EEOC has jurisdiction over an allegation of national origin discrimination. In general, OSC covers national origin discrimination allegations against smaller employers—those that employ between four and fourteen employees—and the EEOC covers national origin discrimination against larger employers—employers with 15 or more employees—if the employees work for twenty or more calendar weeks in the current or preceding calendar year. OSC and the EEOC have a Memorandum of Understanding (“MOU”), detailing the procedures by which the two offices handle charges that fall within the jurisdiction of the other agency.

3. Document abuse: when employers request more or different documents than are required to verify employment eligibility, reject reasonably genuine-looking documents, or specifically request certain documents with the intent to discriminate on the basis of national origin or citizenship status. All work-authorized individuals are protected from document abuse.

4. Retaliation: when employers threaten, intimidate, coerce, or retaliate against an individual for the purpose of interfering with any right or privilege secured under 8 U.S.C. § 1324b or because the individual has filed a charge or intends to file a charge or participates in an investigation or any proceeding. All individuals are protected from retaliation.

Injured parties may file charges with OSC alleging a violation of 8 U.S.C. § 1324b within 180 days of the alleged discrimination. However, OSC also initiates independent investigations (without the filing of a complaint) if there is reason to believe that unlawful discrimination occurred. Although independent investigations normally involve alleged discriminatory policies that potentially affect many employees or applicants, OSC also conducts independent investigations when even one person is allegedly discriminated against. OSC may bring enforcement actions against employers within 210 days of the filing of a charge, or—for independent investigations—within 180 days of the last discriminatory act.

b. United States Citizenship and Immigration Services

USCIS Verification Division has authority over and is responsible for administering, monitoring, and assuring program integrity and compliance for the lawful and proper

verification of employment authorization under the Employment Eligibility Verification Program (E-Verify).

2. AUTHORITY

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

- Section 274B of the Immigration and Nationality Act; 8 U.S.C. § 1324b
- Homeland Security Act of 2002 (Pub. L. No. 107-296)
- Pub. L. 104-208, Div. C., Title IV, Subtitle A, §§ 401—05, as amended (8 U.S.C. § 1324a note)
- 5 U.S.C. § 552a, the Privacy Act of 1974

3. PURPOSE

The purpose of this MOA is to establish the relationship and process for referrals between the USCIS Verification Division and CRT OSC with respect to:

- a. allegations of discrimination arising out of employer use of E-Verify; and
- b. information regarding the misuse, abuse, or fraudulent use of E-Verify.

4. USCIS RESPONSIBILITIES

- a. The USCIS Verification Division will designate a point of contact (POC) who will ensure cooperation, communication, and coordination with OSC.
- b. The USCIS Verification Division will refer to OSC all discrimination matters within OSC and/or EEOC's jurisdiction. OSC will determine when a matter should be forwarded to EEOC (pursuant to the requirements of OSC's MOU with EEOC). In particular, the USCIS Verification Division will refer all matters that may involve an individual act or a pattern or practice of employment discrimination on the basis of national origin or citizenship status; document abuse; or retaliation. The USCIS Verification Division will also refer all matters that may involve the misuse, abuse, or fraudulent use of E-Verify that can result in the adverse treatment of employees. OSC may use such information for further investigation and, in instances when USCIS continues its investigative efforts regarding the matter, will coordinate its activities with USCIS as much as possible without compromising OSC's investigation.
- c. A referral from the USCIS Verification Division to OSC will include relevant transactional and user data collected through E-Verify, including citizenship status information associated with each employee for whom a query was submitted; any information that the USCIS Verification Division can obtain from other data sources identifying the citizenship status and/or national origin of the workers for whom

queries were submitted; any relevant information collected through an audit or administrative inquiry into the employer; and/or specific information of potential misuse, including discriminatory employer actions, obtained through USCIS's customer service or E-Verify telephone lines.

- d. The USCIS Verification Division will provide to OSC in writing the final disposition of any matter referred to it by OSC pursuant to paragraph 5 of this MOA.
- e. The USCIS Verification Division agrees to act, and is hereby designated as an agent for OSC, for the sole purpose of satisfying the time limits for filing a charge when the USCIS Verification Division receives an affirmative written communication alleging misuse of E-Verify that may violate the anti-discrimination provision of the INA. To ensure that filing deadlines are satisfied, the USCIS Verification Division shall accurately record the date of receipt of such communications.
- f. The USCIS Verification Division will provide to OSC all information requested by OSC in connection with an investigation undertaken by OSC of an alleged violation of 8 U.S.C. § 1324b in accordance with 5 U.S.C. § 552a(b)(7) of the Privacy Act. A request by OSC will be a written request from the Deputy Special Counsel and will otherwise satisfy the standards set forth in 5 U.S.C. § 552a(b)(7). If OSC requests information for another purpose, OSC shall so inform USCIS, and USCIS will consider the request and respond in a manner consistent with the law.
- g. 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.

5. OSC RESPONSIBILITIES

- a. OSC will designate a point of contact (POC) who will ensure cooperation, communication, and coordination with USCIS.
- b. If OSC becomes aware of information relating to suspected employer or employee misuse, abuse, or fraudulent use of E-Verify, OSC will share that information with the USCIS Verification Division. The USCIS Verification Division may use such information for further investigation and, in instances when OSC continues its investigative efforts regarding the matter, will coordinate its activities with OSC as much as possible.
- c. A referral from OSC to the USCIS Verification Division will include documents or information collected during an investigation of an allegation of misuse, abuse or fraudulent use of the E-Verify Program or specific information of employer misuse of E-Verify obtained through OSC's hotlines.
- d. OSC will provide to the USCIS Verification Division a written acknowledgement of the acceptance of a referral made pursuant to paragraph 4 of this MOA. OSC will also notify the Verification Division in writing of OSC's final disposition of each

such referral. Further, OSC will provide written notice to the Verification Division whenever a matter referred by it to OSC is subsequently referred to EEOC under the OSC/EEOC MOU referenced in paragraph 1.a.2 of this MOA.

- e. Consistent with applicable laws, regulations, and policies, and the availability of OSC resources, OSC will commit personnel and resources sufficient to support this MOA.

6. POINTS OF CONTACT

- a. The CRT OSC POC is the Special Counsel, the Deputy Special Counsel, a designee, or a successor.
- b. The USCIS Verification Division POC is the Chief of the Monitoring and Compliance Branch, USCIS Verification Division, a designee, or a successor.

7. EXCHANGE AND DISCLOSURE OF INFORMATION

- a. All information exchanged between the Parties under this MOA will be in accordance with applicable laws, regulations, and policies, including but not limited to, information-security guidelines of the sending party with respect to any information that is deemed personally identifiable information (PII), including but not limited to the employee or applicant's name, Social Security number, alien number, date of birth, or other information that may be used to identify the individual.
- b. All information exchanged between the Parties under this MOA will be done only through the POCs identified above, their designees, or successors.
- c. In accordance with DHS/DOJ standards, the Parties agree to maintain physical, electronic, and procedural safeguards to appropriately protect the information shared under this Agreement against loss, theft, or misuse; unauthorized access; and improper disclosure, copying, use, modification, or deletion. In addition, personal information shall be protected by administrative, technical, and physical safeguards appropriate to the sensitivity of the information. In general, the information to be provided by USCIS and OSC is considered sensitive but unclassified (SBU) in nature. It is the intent of the Parties that the exchange of data shall be conducted at the unclassified level but For Official Use Only (FOUO). Any data shared using portable media must be encrypted and labeled as FOUO.

8. COMMUNICATIONS AND REPORTING

To further safeguard the privacy, security, confidentiality, integrity, and availability of the connected systems and the information they store, process, and transmit, the Parties agree to:

Provide Notice of Events: The Parties shall provide notice—written unless otherwise specified—of specific events as indicated below:

Privacy or Security Breach: Each Party shall comply with its agency's reporting requirements for any breach of the security of the interconnected systems or unauthorized use or disclosure of any personal information shared under this Agreement.

9. OTHER PROVISIONS

- a. If the referring Party has retained jurisdiction over any aspect of an investigation at the time of referral to the other Party, both Parties will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort and any risk that a Party's investigation or action may compromise another ongoing investigation.
- b. Nothing in this MOA is intended to conflict with existing laws, regulations, or other guidance binding on USCIS and/or CRT. 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. If a Party identifies any such inconsistency it shall bring it to the attention of the other Party in order to modify the MOA as may be necessary.
- c. 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.

10. EFFECTIVE DATE

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

11. MODIFICATION

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

12. REVIEW

The Parties agree to review 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.

13. TERMINATION

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

SIGNATORY AUTHORITIES

Alejandro Mayorkas

Alejandro Mayorkas

Director

U.S. Citizenship and Immigration Services

Department of Homeland Security

March 17, 2010

Date

T. E. Perez

Thomas E. Perez

3/17/10

Date

Assistant Attorney General

Civil Rights Division

Department of Justice