

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

DANIEL RENTERIA-VILLEGAS; DAVID)	
GUTIERREZ-TURCIOS; ROSA LANDAVERDE,)	
)	Case No. 3:11-cv-218
Plaintiffs,)	
)	Senior Judge John T. Nixon
v.)	
)	Magistrate Judge Joe Brown
METROPOLITAN GOVERNMENT OF)	
NASHVILLE AND DAVIDSON COUNTY;)	
UNITED STATES IMMIGRATION AND)	
CUSTOMS ENFORCEMENT,)	
)	
Defendants.)	

THIRD AMENDED COMPLAINT

Come now Plaintiffs Daniel Renteria-Villegas (“Renteria”), David Ernesto Gutierrez-Turcios (“Gutierrez”), and Rosa Landaverde (“Landaverde”), by and through their undersigned counsel, and hereby file this Third Amended Complaint against Defendant Metropolitan Government of Nashville and Davidson County (“Metro Government”) and Defendant United States Immigration and Customs Enforcement Agency (“ICE”).

PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief and damages. Plaintiffs seek a declaration of their rights and a construction of the validity under the Metropolitan Charter of Nashville and Davidson County (“Metro Charter”) of a 2009 Memorandum of Agreement between the Metro Government and ICE, as well as the Metro Council Resolution approving the Agreement. *See* Certified Copy of Metro Charter §§ 16.05 and 8.202, attached as Exhibit 1. *See also* Memorandum of Agreement (“287(g) Agreement”), attached as Exh. 2. *See also* Copy of Metro Council Resolution 2009-997, attached as Exh. 3. Because the 287(g) Agreement empowers Davidson County Sheriff’s Office (“DCSO”) deputies to perform law enforcement

functions that are prohibited by mandatory language in the Metro Charter, the Metro Council Resolution approving the Agreement was *ultra vires*, the Agreement itself is *void ab initio*, and performance of the Agreement violates 8 U.S.C. §§ 1357(a) and 1357(g)(1), 8 C.F.R. § 287, and the Due Process Clause of the Fifth Amendment to the United States Constitution.

JURISDICTION AND VENUE

2. This action was originally filed in the Chancery Court for Davidson County, Tennessee on January 7, 2011. The Chancery Court had jurisdiction pursuant to Tenn. Code Ann. §§ 16-11-102 and 29-14-101 *et seq.*

3. On March 9, 2011, Defendant ICE filed a Notice of Removal in this Court. (Doc. Entry No. 1). ICE asserted the jurisdiction of this Court based exclusively on 28 U.S.C. § 1442(a)(1). Doc. Entry No. 1, ¶ 8.

4. In addition, this Court has jurisdiction over this action pursuant to 5 U.S.C. §§ 702 *et seq.* (waiving sovereign immunity for suits against the government for injunctive relief), 28 U.S.C. § 1331 (federal question), § 1343 (civil rights), and § 1367 (supplemental jurisdiction).

5. Venue is proper in this District under 28 U.S.C. § 1402(b) because the acts at issue in this lawsuit occurred within this District.

PARTIES

6. Plaintiff **Daniel Renteria-Villegas** (“**Renteria**”) is a nineteen year-old natural born citizen of the United States. At all times relevant to this action, he has resided in Davidson County, Tennessee.

7. Plaintiff **David Ernesto Gutierrez-Turcios** (“**Gutierrez**”) is a twenty-three year-old Lawful Permanent Resident of the United States. He is a native and citizen of Honduras. At all times relevant to this action, he has resided in Davidson County, Tennessee.

8. Plaintiff **Rosa Landaverde** has held Temporary Protected Status since 2001. She is a native and citizen of El Salvador At all times relevant to this action, she has resided in Davidson County, Tennessee.

9. Defendant **Metropolitan Government of Nashville and Davidson County** (“**Metro Government**”) is an incorporated, legal subdivision of the State of Tennessee. Metro Government is governed by a Mayor and a Metro Council, subject to the organic document enabling its creation – the Metro Charter – and the Tennessee Constitution and Tennessee Code Annotated.

10. Defendant **United States Immigration and Customs Enforcement Agency** (“**ICE**”) is an executive agency of the United States Department of Homeland Security. ICE is charged with enforcing federal immigration law consistent with the laws and Constitution of the United States. ICE first entered this action as a court-ordered indispensable party after Motion by the Metro Government. Order Granting Motion to Add The United States As An Indispensable Party And Granting Thirty Days To Amend Complaint, Case No. 11-32-II (Davidson County Chancery Ct. Feb. 28, 2010).

FACTUAL ALLEGATIONS

A. The DCSO’s Limited Powers Under the Metro Charter

11. Since the institution of metropolitan government in 1963, the Davidson County Sheriff is no longer a law enforcement official. Currently, the Sheriff's Office is charged with two major functions: the safety and security of all inmates housed in Davidson County jails, and the service of all civil process. The Metropolitan Nashville Police Department functions as the primary law enforcement agency.

12. Section 16.05 of the Metro Charter specifies that the Sheriff of Davidson County “shall have such duties as are prescribed by Tennessee Code Annotated 8-8-201, or by other provisions of general law; except, that within the area of the metropolitan government the sheriff shall not be the principal conservator of the peace. The function as principal conservator of the peace is hereby transferred and assigned to the metropolitan chief of police, provided for by article 8, chapter 2 of this Charter.” (emphasis added)

13. Article 8, chapter 2 of the Charter sets forth the “responsibility and powers” of the Metropolitan Police Department as follows: “the department of the metropolitan police shall be responsible within the area of the metropolitan government for the preservation of the public peace, prevention and detection of crime, apprehension of criminals, protection of personal property rights and enforcement of laws of the State of Tennessee and ordinances of the metropolitan government. The director and other members of the metropolitan police force shall be vested with all the power and authority belonging to the office of constable by the common law and also with all the power, authority and duties which by statute may now or hereafter be provided for police and law enforcement officers of counties and cities.” (emphasis added)

14. Section 2.01(36) of the Metro Charter specifies that “when any power is vested by this Charter in a specific officer, board, commission, or other agency, the same shall be deemed to have exclusive jurisdiction within the particular field.” (emphasis added)

15. The Tennessee Supreme Court has interpreted the text of Sections 16.05, 8.202, and 2.01(36) and determined that “Section 16.05 makes such an exclusive vestment in the Chief of Police.”

16. A senior ICE official responsible for supervising the DCSO 287(g) program has repeatedly acknowledged to an ICE Deputy Assistant Secretary that “the DCSO has no law

enforcement role outside the correctional program. The Nashville Metropolitan Police Department maintains all authority to conduct law enforcement functions, including arrests of violators.”

B. The 287(g) Agreement Empowers DCSO Deputies to Perform Law Enforcement Functions

17. The Metro Government entered into its current 287(g) Agreement with ICE in October of 2009.

18. By its terms, the Agreement delegates certain federal immigration law enforcement powers to qualified DCSO deputies called “Jail Enforcement Officers.”

19. The Agreement delegates to DCSO Jail Enforcement Officers:

- a. “the power and authority to interrogate any person believed to be an alien as to his right to be in the United States (INA § 287(a)(1) and 8 C.F.R. § 287.5(a)(1))”;
- a. 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))”;
- b. the “power and authority to serve warrants of arrest for immigration violations pursuant to INA § 287(a) and 8 C.F.R. § 287.5(e)(3)[.]”;
- c. “the power and authority to prepare charging documents”; and
- a. the “power and authority to issue immigration detainers (INA § 236, INA § 287, and 8 C.F.R. § 287.7) and I-213, Record of Deportable/Inadmissible Alien, for processing aliens in categories established by ICE supervisors[.]”

20. The 287(g) Agreement states its express intent “to enable the DCSO to identify and process immigration violators and conduct criminal investigations under ICE supervision[.]”

21. The 287(g) Agreement states its purpose as allowing the DCSO's collaboration with ICE "to enhance the safety and security of communities by focusing resources on identifying and proposing for removal criminal aliens who pose a threat to public safety or a danger to the community."

22. Sheriff Daron Hall, speaking under oath, described his understanding of what DCSO 287(g) Jail Enforcement Officers do: "Well, the way I understand it, it's just like a Police Department . . . taking their charges to a district attorney, for example; here's what we believe happened, here are the facts surrounding this case; and then it's determined whether to pursue charges. Charges, in my analogy, is that the federal agent then takes the case to a federal judge. Very similar to that. We're doing the grunt work of the case and we're turning in what we have on the individual."

23. In a subsequent deposition in which the Metro Government designated Sheriff Hall as the individual testifying on Metro's behalf pursuant to Fed. R. Civ. P. 30(b)(6), the Sheriff indicated that he would not alter this statement in any way.

C. ICE Trains DCSO Deputies To Perform Federal Law Enforcement Functions

24. The 287(g) Agreement and 8 U.S.C. § 1357(g) require ICE to train and certify DCSO personnel through the Immigration Authority Delegation Program.

25. The ICE curriculum for the initial training of DCSO deputies to complete in order to obtain federal 287(g) designation lasts almost four weeks.

26. Modules in the ICE 287(g) training DCSO deputies receive include: "ICE enforcement operations," "Officer civil liability and civil rights," "Victim/Witness Awareness," "Sources of Information," "A-File Review," "Activity Prep," "Nationality Law," "Statutory Authority," "Criminal Law," "False Claim to USC," "DOJ Guidance Regarding the Use of

Race,” “Law Exam I,” “Document Examination,” “Immigration Law,” “Law Exam II,” “Alien Encounters,” “Re-Entry After Removal,” “I-213 Prep,” “Removal Charges,” “Consular Notification,” “Alien Processing,” and “Intel Overview.”

27. Through their training, DCSO 287(g) deputies are required to complete Classroom Exercises in which they must demonstrate knowledge of the federal immigration and criminal laws, and the sources of power and authority by which immigration officers enforce these laws.

28. These training materials distinguish between “booking information” and other information DCSO 287(g) Jail Enforcement Officers may collect during their interrogations. The training manual states, “If the alien invokes his right to counsel, an immigration officer can only ask the alien about ‘booking information’ such as the alien’s name, date of birth, sex, color of hair and eyes, height, weight, and U.S. address.”

29. Nationality and immigration status are not included within the list of “booking information” questions in ICE’s training materials.

30. As part of the “Criminal Law” portion of ICE’s training curriculum, DCSO deputies were expected to be able to “1. Identify Federal criminal violations;” “2. Identify the elements of Federal criminal violations;” “3. Identify the elements of Federal administrative violations;” and “4. Identify the judicial process for criminal violations.” This training module states, “Immigration officers . . . work extensively in both criminal and administrative law arenas and accordingly must always be aware and sensitive to the differences between the two. Many situations encountered in the field involve laws that provide for separate criminal and administrative sanctions. Many illegal actions relating to the enforcement of the immigration laws of the United States (U.S.) can be either criminally or administratively prosecuted.”

D. DCSO 287(g) Officers Perform Federal Law Enforcement Investigations

31. When law enforcement officers make an arrest in Davidson County, they normally complete an arrest report indicating the arrestee's place of birth.

32. Once the arrestee arrives at the DCSO for booking, DCSO deputies may inquire about the arrestee's nationality as part of the biographic information they collect during the booking process.

33. If information obtained during arrest and booking indicates that an arrestee may be foreign-born, a DCSO booking deputy places a red stamp that reads, "ICE" on the arrestee's paperwork.

34. That paperwork is then placed in a queue for further investigation by a DCSO Jail Enforcement Officer.

35. Pursuant to the 287(g) contract, DCSO Jail Enforcement Officers may prepare and issue a federal immigration detainer, "Form I-247, Immigration Detainer – Notice of Action."

36. The detainer – also called an "ICE Hold" – requests that the DCSO keep the inmate in custody for up to forty-eight additional hours (not including weekends and federal holidays) while ICE investigates his or her immigration status.

37. For each inmate subject to an ICE hold, Form I-247 next indicates, "Investigation has been initiated to determine whether this person is subject to removal from the United States."

38. Even if no I-247 has been lodged against an inmate, DCSO Jail Enforcement Officers consistently add a notation to an inmate's Jail Management System file if that inmate is subject to a 287(g) investigation.

39. The federal investigation into an arrestee's immigration status occurs primarily through an interrogation by a DCSO 287(g) Jail Enforcement Officer.

40. This federal investigation and the interrogation require DCSO Jail Enforcement Officers to apply their training and knowledge of federal immigration law to determine whether the subject of the interview has violated federal law.

41. The questions DCSO Jail Enforcement Officers regularly ask during 287(g) interrogations include:

- a. "When did you cross the border?" (a potential violation of 8 U.S.C. § 1325);
- b. "Did you pay a smuggler?";
- c. "How much?"; and
- d. "Prior deports?" (a potential violation of 8 U.S.C. § 1326)

42. Lying to a Jail Enforcement Officer during a 287(g) interrogation can subject the subject to criminal liability for lying to a federal agent.

43. Upon completion of an investigation, DCSO ICE deputies recommend individuals for removal (deportation) and a federal ICE agent working in the CJC signs that recommendation if approved.

44. If the federal ICE Supervisor approves the DCSO Jail Enforcement Officer's recommendation to place the inmate into immigration proceedings, the JEO typically prepares a "Removal Packet."

45. A copy of this packet accompanies the arrestee as she is processed through federal detention centers and the immigration court system.

46. The "Removal Packet Worksheet" contains a checklist of documents that should be included, along with areas for the JEO to initial next to each required form.

47. These documents constitute the record DHS will use against the inmate in removal proceedings.

48. Among them is Form I-213, Record of Deportable/Inadmissible Alien.

49. The DCSO Jail Enforcement Officer prepares this record and presents it to the ICE Supervisor for review, approval, and signature.

50. ICE training of DCSO deputies clarifies the critical role of the I-213 in removal proceedings: “The use of the I-213 creates a historical record of information which, since it is used as evidence in removal proceedings, must be complete and accurate. A properly completed I-213 then provides the basis for successful processing of the alien and stands as primary evidence of alienage and removability.”

51. DCSO Jail Enforcement Officers have been reminded by their ICE supervisor that, “the I-213 is the evidence that is submitted to the judge that the alien was properly interviewed.”

52. In addition to the I-213, DCSO 287(g) Jail Enforcement Officers are also authorized to prepare and sign Form I-877. The first full paragraph of text on the first page of Form I-877 reads: “I am an officer of the United States Immigration and Naturalization Service, authorized by law to administer oaths and take testimony in connection with the enforcement of the Immigration and Nationality laws of the United States. I desire to take your sworn statement regarding: Immigration status, criminal record and criminal conduct.”

53. Lying to a DCSO Jail Enforcement Officer after being placed under oath constitutes perjury under federal law.

54. The second question on Form I-877 is “Do you wish to have a lawyer or any other person present to advise you?”

55. The following nine pages of Form I-877 contain questions designed by ICE to elicit admissions of civil and criminal liability on a wide range of immigration-related topics.

56. DCSO Jail Enforcement Officers also prepare, sign, and present to the subjects of their investigations other law enforcement documents, including the Notice to Appear in Immigration Court (a charging document), the Warrant for Arrest of Alien, and, when appropriate, a Notice of Intent/Determination to Reinstate a Prior Removal Order.

E. The DCSO's 287(g) Investigation and Unlawful Detention of Daniel Renteria

57. Metro Police Department Officer Rickey Bearden arrested Daniel Renteria at his home in Davidson County on Sunday, August 22, 2010, at or around 4:46 p.m.

58. This arrest occurred pursuant to a criminal warrant that was subsequently dismissed for lack of probable cause.

59. The Metro Police Officer who arrested Renteria completed an Arrest Report indicating Renteria's place of birth was "Mexico."

60. DCSO employees booked Renteria into the DCSO's Criminal Justice Center facility between 5:00 p.m. and 8:00 p.m. on August 22.

61. Among the belongings Renteria had in his possession at the time of booking was his state-issued Tennessee Identification Document (I.D.) card.

62. A DCSO employee took this card and all Renteria's other belongings into the DCSO's possession during booking.

63. When DCSO deputies booked Renteria into the Criminal Justice Center, they asked him where he was born.

64. Renteria truthfully responded that he was born in Portland, Oregon. The demographic information in Renteria's DCSO Jail Management System file states his P[lace] O[f] B[irth] as "OR[EGON]."

65. During the booking process a DCSO deputy or employee named "K. Cash" placed an ICE Hold on Renteria at approximately 5:57 p.m. on August 22.

66. DCSO deputy and designated 287(g) Jail Enforcement Officer Willie Sydnor updated Renteria's ICE Hold status to reflect that an active ICE investigation was underway at 7:57 p.m. on August 22.

67. Upon information and belief, a DCSO deputy placed a red stamp that reads "ICE" on Renteria's intake and booking paperwork and dropped that paperwork into a box for DCSO's 287(g) Jail Enforcement Officers to retrieve.

68. DCSO 287(g) Jail Enforcement Officers initiated a federal law enforcement investigation of Renteria to determine his immigration status, and also to determine whether he had violated federal criminal law by making a false claim to U.S. citizenship, being in possession of false identification documents, or using a stolen social security number.

69. At approximately 9:47 a.m. on August 24, 2010, DCSO deputy and designated 287(g) Jail Enforcement Officer Marty Patterson scheduled Renteria for an "ICE Interview", to occur between 10:30 a.m. and 11:00 a.m. the same day.

70. The purpose of the DCSO Jail Enforcement Officer's interrogation of Renteria was to elicit specific information related to possible violations of federal immigration and criminal law. *See* 8 C.F.R. § 287.5(a)(1).

71. This 287(g) interrogation occurred in a small office within the DCSO's administrative area at the CJC between 12:26 p.m. and 1:09 p.m. on August 24. The sign above the door on this small office reads, "ICE OFFICE."

72. Upon information and belief, a computer terminal inside this ICE office is equipped with ICE's IDENT/ENFORCE software and database.

73. Upon information and belief, the IDENT/ENFORCE system is used by DCSO 287(g) Jail Enforcement Officers to collect and share with ICE and other law enforcement agencies investigative information DCSO deputies gather during 287(g) encounters with suspected foreign-born inmates.

74. Upon information and belief, a DCSO 287(g) Jail Enforcement Officer utilized the IDENT/ENFORCE system and other computer technology during Daniel Renteria's interrogation on August 24, 2010.

75. During this interrogation, a male DCSO 287(g) Jail Enforcement Officer told Renteria that he was suspected of having lied about being born in the United States.

76. Making a false claim to U.S. citizenship is a violation of federal criminal law. *See* 18 U.S.C. § 911.

77. The Jail Enforcement Officer asked Renteria the name of the hospital where he was born.

78. Renteria truthfully answered that he was born at St. Vincent's Hospital.

79. Renteria's answer, however, did not appear to allay the Jail Enforcement Officer's suspicions about Renteria's citizenship and immigration status.

80. Improper entry into the United States by a non-U.S. citizen is a federal crime, as is illegal reentry. *See* 8 U.S.C. §§ 1325, 1326.

81. The DCSO 287(g) Jail Enforcement Officer informed Renteria that the social security number he provided at booking did not match the one on a previous report.

82. Using a false social security number is a federal crime. *See* 18 U.S.C. § 1028.

83. When Renteria recited his social security number, the DCSO 287(g) Jail Enforcement Officer appeared to type that number on a computer keyboard.

84. The DCSO 287(g) interrogator looked at a computer monitor after typing the numbers and then said to Renteria, “Oh, okay. That’s right.”

85. This indicated to Renteria that his social security number had come back on a computer database as being valid, and as belonging to him.

86. Upon information and belief, at this point in the interrogation and investigation, the DCSO Jail Enforcement Officer had objectively verified using a government or other database that Renteria possessed a valid social security number.

87. In addition to questioning him about his social security number, the DCSO Jail Enforcement Officer questioned Renteria about the names of his family members, their places of birth, and their current places of residence.

88. Renteria responded that both of his parents had been born in Mexico, and that some of his relatives currently live in Mexico. He also said that other relatives currently live in the United States.

89. During the interrogation, Renteria saw his Tennessee state I.D. card paper-clipped to a file folder that the DCSO Jail Enforcement Officer used.

90. The Jail Enforcement Officer took Renteria’s I.D. card off the file folder, showed it to Renteria, and asked Renteria how he had obtained it.

91. Renteria told the officer he used his U.S. passport and social security card when he applied for his state I.D.

92. Tennessee law requires applicants to demonstrate proof of U.S. citizenship or other lawful immigration status as a pre-requisite for obtaining a valid, state-issued I.D. T.C.A. § 55-50-303(a)(9).

93. Using a false identification document is a federal crime. *See* 18 U.S.C. § 1028.

94. The DCSO Jail Enforcement Officer who conducted the 287(g) interrogation did not lift the ICE Investigative Hold when the interrogation ended.

95. Nor did the DCSO Jail Enforcement Officer tell Renteria what, if anything, he could do to prove his U.S. citizenship to the DCSO and get the ICE Hold removed.

96. At or around 12:52 p.m. on September 3, 2010 the DCSO became aware via the JMS that a Davidson County General Sessions Judge dismissed the charge for which Renteria was arrested on August 22, 2010.

97. At 9:56 p.m. on September 3, 2010, DCSO deputy or employee “W. Ford” deactivated Renteria’s “ICE Investigative Hold” imposed by DCSO several days earlier.

98. “W. Ford” lifted the ICE Investigative Hold only after two of Renteria’s relatives brought his original birth certificate and original passport to the CJC late in the evening on September 3, 2010.

99. A DCSO employee made a copy of these documents, returned the originals, and kept the copies.

100. Even after DCSO employees had original documents proving Renteria’s U.S. citizenship and made photocopies of those documents at around 10:00 p.m. on September 3, it took almost three more hours for Defendants to release him.

101. The DCSO released Renteria at 12:48 a.m. on September 4, 2010.

102. The twelve hours Renteria spent in Defendant DCSO's custody after his charge was dismissed were a direct result of the DCSO's 287(g) Program and the ICE Investigative Hold placed on Renteria by DCSO Jail Enforcement Officers.

103. However, no Jail Enforcement Officer or ICE agent ever lodged an I-247, Immigrant Detainer – Notice of Action against Renteria, as required by 8 C.F.R. § 287.7(d).

104. Renteria is of Latino race, ethnicity, and appearance.

105. He is a native Spanish-speaker of limited English proficiency.

106. Constance Taite has previously stated that DCSO jail inmates who claim to be U.S. Citizens will be subjected to a 287(g) investigation if they speak "little English."

107. Despite documentary proof that he is a natural born citizen of the United States, Renteria's name and documents were retained by DCSO Jail Enforcement Officer Marty Patterson.

108. Patterson retained these documents for his own "personal file," and did not disclose the existence of this file in response to an Open Records Request made by Renteria's undersigned attorney.

109. Patterson also seized Renteria's Tennessee Identification Document card during the 287(g) interrogation for the purposes of using it as evidence in the federal law enforcement investigation of Renteria.

110. This I.D. card has not been returned, despite repeated requests by both Renteria and his undersigned attorney.

111. Renteria's name and the names and immigration status information of his family members remain in at least one federal database as a result of the 287(g) investigation DCSO officers conducted.

112. Renteria is suffering ongoing, actual harm as a result of the DCSO's illegal interrogation and investigation of him and his family.

F. The DCSO's Unlawful Investigation of David Gutierrez

113. An officer of the Metro Police Department arrested David Gutierrez following a traffic accident on April 12, 2010.

114. He was booked into the DCSO's Criminal Justice Center facility shortly after being arrested.

115. Upon information and belief, Gutierrez's booking records correctly indicated that he was not born in the United States.

116. Upon information and belief, a DCSO Deputy placed on ICE Hold on Mr. Gutierrez on or about April 12, 2010.

117. Upon information and belief, a DCSO deputy placed a red stamp that reads "ICE" on Gutierrez's intake and booking paperwork and dropped that paperwork into a box for DCSO's 287(g) Jail Enforcement Officers to retrieve.

118. Upon information and belief, DCSO 287(g) Jail Enforcement Officers initiated a federal law enforcement investigation of Gutierrez to determine his immigration status, and also to determine whether he had any violated federal criminal laws.

119. Soon after he entered DCSO custody, Gutierrez was interrogated in the DCSO 287(g) "ICE" Office by a DCSO 287(g) Jail Enforcement Officer.

120. The Jail Enforcement Officer asked Gutierrez where he was born. Gutierrez replied that he was born in Honduras.

121. The Jail Enforcement Officer then asked Gutierrez if he is a U.S. citizen or Permanent Resident of the United States, or if he had any other form of legal authorization to be and remain in the United States. Gutierrez indicated that he is a Lawful Permanent Resident of the United States.

122. The Jail Enforcement Officer asked Gutierrez for his social security number. Gutierrez recited his social security number. The interrogator typed the numbers Gutierrez provided into the ICE computer terminal located inside the DCSO's "ICE Office."

123. After reviewing the computer screen, the DCSO 287(g) Officer indicated to Gutierrez that he would not have any problems with immigration at this juncture in his case.

124. Gutierrez's criminal defense attorney has reached a plea agreement that will require Gutierrez to serve several days in jail at a DSCO facility. Gutierrez will accept this plea agreement at an upcoming court hearing.

125. Pursuant to the terms of the plea agreement, Gutierrez will be required to enter the DCSO jail facility in the immediate future. He will have two additional criminal convictions on his record when he enters the jail.

126. Daron Hall is the Sheriff of Davidson County and chief policymaker for the DSCO. Sheriff Hall has stated under oath that it is DCSO's policy to subject every person who enters the Davidson County Jail system to a 287(g) investigation if they are or may be foreign-born. Upon information and belief, this was the DCSO's policy prior to and as of January 7, 2011 -- the date Plaintiff Renteria filed his Verified Complaint.

127. David Gutierrez will re-enter the DCSO Jail system, and because he was not born in the United States, he will be subjected to the DCSO's 287(g) investigation.

128. DCSO's stated policy requires the DCSO to lodge an ICE Hold against Gutierrez and conduct a law enforcement investigation into his right to remain in the United States in light of his two new criminal convictions.

129. It was DCSO's policy as of January 7, 2010 to automatically classify inmates with ICE Holds as medium security inmates.

130. A 287(g) investigation by DCSO Jail Enforcement Officers will adversely impact Gutierrez's liberty by (a) automatically subjecting him to medium security classification; (b) subjecting him to additional constraints and conditions on his release from DCSO custody; and (c) subjecting him to an additional 287(g) law enforcement investigation into his right to remain in the United States as a Lawful Permanent Resident.

G. Metro Government's Unlawful Expenditure of Plaintiffs' Municipal Tax Dollars On The Illegal 287(g) Agreement

131. Rosa Landaverde co-owns real property in Davidson County, Tennessee.

132. She has paid municipal property taxes on that real property to the Metropolitan Government of Nashville and Davidson County.

133. Ms. Landaverde has also paid municipal sales tax on purchases made within Davidson County.

134. Her son is currently in removal proceedings after being processed by the DCSO 287(g) program.

135. Plaintiffs Renteria and Gutierrez have also paid municipal sales tax on purchases made within Davidson County.

136. The DCSO 287(g) program currently consists of eleven DCSO employees.

137. Pursuant to 8 U.S.C. § 1357(g)(1) and the 287(g) Agreement, all 287(g)-related duties performed by these 11 employees must be performed at the expense of the Metro Government.

138. The DCSO receives funding, in whole or in part, for the salaries of the 8 corrections officers, 2 supervisors, and 1 Director who administer the 287(g) program, from the Metro Government's "GSD General Fund 10101" account.

139. In Fiscal Year 2010-2011, approximately 52% of the Metro Government's tax revenues came from property taxes.

140. In Fiscal Year 2010-2011, approximately 17% of the Metro Government's tax revenues came from property taxes.

141. All Plaintiffs therefore have standing as municipal taxpayers for preliminary and permanent injunctive relief to prevent the continued misuse of their municipal tax dollars by the Metro Government on the illegal 287(g) program.

CAUSES OF ACTION

COUNT I

VIOLATION OF THE METRO CHARTER

(Tenn. Code. §§ 29-14-102, 103, 111; 28 U.S.C. § 2201)
(All Plaintiffs against Defendant Metro Government)

142. Plaintiffs hereby adopt and incorporate by reference the allegations contained in all paragraphs above.

143. All parties meet the definition of a "person" under T.C.A. § 29-14-101.

144. The Tennessee legislature has directed courts to liberally construe the declaratory judgment provisions of the Tennessee Code to settle disputes and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations. T.C.A. § 29-14-113.

145. Plaintiffs' legal rights have been adversely affected by Defendant Metro Government's actions under the 287(g) Agreement. T.C.A. § 29-14-103.

146. A real and actual controversy exists between Plaintiffs and Defendant Metro Government concerning the legality of the 287(g) Agreement under the Metro Charter.

147. Plaintiffs claim the DCSO's 287(g) law enforcement investigation and interrogation of them exceeds the Sheriff's powers under the Metro Charter, that the Metro Council violated mandatory provisions of the Metro Charter by approving the 287(g) Agreement, and that the Agreement is therefore void.

148. Defendant Metro Government maintains the 287(g) Agreement is valid in all respects.

149. A declaratory judgment as to the validity of the Agreement under the Metro Charter would resolve this controversy.

150. Plaintiffs therefore seek a declaratory judgment declaring that the Metro Council acted *ultra vires* by approving the 287(g) Agreement, that the Agreement is void *ab initio*, and that the expenditure of municipal taxpayer funds on the Agreement's performance violates the Metro Charter and state law governing the Metro Government's use of taxpayer dollars.

151. Plaintiffs also seek a preliminary and then a permanent injunction halting the performance of the 287(g) Agreement.

COUNT II
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(5 U.S.C. §§ 701 *et seq.*; 28 U.S.C. § 2201)
(Plaintiffs Renteria and Gutierrez against ICE)

152. Plaintiffs hereby adopt and incorporate by reference the allegations contained in all paragraphs above.

153. ICE's approval of the 287(g) Memorandum of Agreement constitutes final agency action.

154. There is no other adequate remedy in court for challenging this final agency action.

155. 8 U.S.C. § 1357(g)(1) explicitly provides that federal immigration law enforcement functions may be performed by state and local law enforcement officers only "to the extent consistent with State and local law."

156. The DCSO's 287(g) program violates Sections 16.05, 8.202 and 2.01(36) of the Metro Charter and the Tennessee Supreme Court's holding in *Metropolitan Government of Nashville and Davidson County v. Poe*, which construes the Metro Charter as making an exclusive vestment of law enforcement power in the Metropolitan Police Department.

157. Because the local party to the 287(g) Agreement cannot perform the Agreement's delegated federal law enforcement functions "consistent with State and local law," ICE's participation in and supervision of the DCSO's 287(g) Program is in excess of statutory authority and short of statutory right. 5 U.S.C. § 706(a)(2).

158. Plaintiffs Renteria and Gutierrez are within the zone of interests Section 1357(g)(1) sought to protect, and their interests have been adversely affected by ICE and the DCSO's violation of this statute.

159. No administrative remedies are available to Plaintiffs for obtaining review of the legality of the 287(g) Agreement under State and local law, and thus, no exhaustion was required. In the alternative, any exhaustion would have been futile.

160. Once ICE entered into the 287(g) Agreement with the Metro Government, it had no discretion to allow a violation of 8 U.S.C. § 1357(g)(1).

161. No statute precludes judicial review.

162. Plaintiffs seek a declaratory judgment that their investigation by the DCSO pursuant to the 287(g) Agreement and ICE's supervision violated the APA and 8 U.S.C. § 1357(g).

COUNT III
Violation of the Fourteenth Amendment Due Process Clause
(42 U.S.C. § 1983, *Bivens*)
Plaintiff Renteria against the Metro Government and ICE

163. Plaintiffs hereby adopt and incorporate by reference the allegations contained in all paragraphs above.

164. The following practices of Defendant Metro Government violated Plaintiffs' right to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution:

- a. Subjecting Renteria to custodial interrogation for the purpose of obtaining evidence of criminal violations without advising him of his right to counsel;
- b. Imprisoning without probable cause after the release of his state charges, and without the issuance of a Form I-247 detainer;
- c. Failing to give Renteria notice and an opportunity to be heard regarding the grounds for the DCSO detainer before imprisoning him pursuant to it; and
- d. Seizing Renteria's Tennessee State I.D. card and never returning it.

165. The imprisonment of Renteria on the basis of a false detainer without due process was carried out under the guise of the 287(g) authority delegated by ICE to DCSO Jail Enforcement Officers.

166. Upon information and belief, this imprisonment was the result of a DCSO custom, policy, and/or practice of deliberate indifference on the part of the DCSO and ICE supervisors charged with administering the 287(g) Agreement.

167. Plaintiff seeks compensatory damages against the Metro Government and a declaratory judgment against the Metro Government and ICE declaring that his right to due process was violated.

COUNT IV
False Imprisonment
Plaintiff Renteria against Metro Government

168. Plaintiffs hereby adopt and incorporate by reference the allegations contained in all paragraphs above.

169. The DCSO imprisoned Renteria for nearly twelve hours without any legal authority.

170. Plaintiff suffered severe emotional distress, humiliation, and psychological trauma as a result of his unlawful imprisonment by the DCSO.

171. Plaintiff therefore seeks compensatory and punitive damages against Defendant Metro Government and a declaratory judgment declaring that he was falsely imprisoned.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court grant the following relief:

(a) Issue a Declaratory Judgment declaring:

1. The DCSO's 287(g) Agreement violates Sections 8.202, 16.05, and 2.01(36) of the Metro Charter, and the Tennessee Supreme Court's holding in *Metropolitan Government of Nashville and Davidson County v. Poe*, 383

- S.W.2d 265, 275 (Tenn. 1964), by allowing the DCSO to interrogate inmates and take and consider evidence as part of a federal law enforcement function that is not necessary and incidental to the Sheriff's role as custodian of the jail and civil process-server, and that the Agreement is consequently invalid; and
2. Defendant Metro Government acted *ultra vires* by approving and implementing a contract that violates the mandatory provisions of the Metro Charter, and the contract is consequently void *ab initio*;
 3. Defendant Metro Government's expenditure of municipal tax revenues on the 287(g) program violates the Metro Charter and state law governing the expenditure of tax revenues by municipal corporations;
 4. Defendants Metro Government and ICE violated Plaintiff Renteria's right under the Fourteenth Amendment to due process;
- (b) Issue a Preliminary and then a Permanent Injunction enjoining the Metro Government, by and through the DCSO, from continuing to execute the 287(g) Agreement; or, in the alternative, issue a Preliminary and then a Permanent Injunction enjoining the DCSO from performing the following functions because the performance of these functions violates the Metro Charter and *Metro v. Poe*:
1. Authorizing, allowing, or directing DCSO personnel to perform the federal immigration law enforcement function of "interrogation," as delegated in Appendix D of the Agreement and defined at 8 U.S.C. § 1357(a)(1) and 8 C.F.R. § 287.5(a)(1); and
 2. Authorizing, allowing or directing DCSO personnel to perform the federal immigration law enforcement functions of "tak[ing] and consider[ing]"

evidence” as delegated in Appendix D of the Agreement and defined at 8 U.S.C. § 1357(b) and 8 C.F.R. § 287.5(a)(2);

3. Expending revenues from municipal taxpayers to fund the 8 corrections officers, 2 supervisors, and 1 program director of the DCSO’s 287(g) program.

- (c) Award Plaintiffs compensatory and punitive damages;
- (d) Award Plaintiffs reasonable costs and attorneys fees pursuant to 28 U.S.C. § 2412(d) & 5 U.S.C. §§ 504 *et seq.*
- (e) Grant Plaintiffs any further relief this Court deems equitable and just.

DATED this 19th day of April, 2011.

Respectfully submitted,

/s Elliott Ozment

Elliott Ozment, Attorney at Law
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served by electronic means via the U.S. District Court's electronic filing system on April 19, 2011 on:

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Trial Attorney
United States Department of Justice
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Ben Franklin Station, P.O. Box 868
Washington, D.C. 20044

s/ Elliott Ozment

Exhibit 1

Certified Copies of Metropolitan Charter of Nashville and Davidson County, Section 16.05 and Section 8.202

Sec. 16.05. - Sheriff.

The sheriff, elected as provided by the Constitution of Tennessee, is hereby recognized as an officer of the metropolitan government. He shall have such duties as are prescribed by Tennessee Code Annotated, section 8-8-201, or by other provisions of general law; except, that within the area of the metropolitan government the sheriff shall not be the principal conservator of peace. The function as principal conservator of peace is hereby transferred and assigned to the metropolitan chief of police, provided for by article 8, chapter 2 of this Charter. The sheriff shall have custody and control of the metropolitan jail and of the metropolitan workhouse to which persons are sentenced for violation of state law, but the urban jail and workhouse in which persons are confined for violations of ordinances of the metropolitan government, or while awaiting trial for such violation, shall be under the custody and control of the metropolitan chief of police. By ordinance the urban jail may be consolidated with the metropolitan jail and the urban workhouse may be consolidated with the metropolitan workhouse. After either or both such consolidations, the jail and the workhouse shall be under the custody and control of the sheriff.

All fees, commissions, emoluments and perquisites of the office of sheriff shall accrue to the metropolitan government as the same formerly accrued to the County of Davidson.

(Res. No. 88-526, § 30, 10-4-88)

EXHIBIT

CERTIFICATION

I, Marilyn S. Swing, being the duly appointed Metropolitan Clerk of The Metropolitan Government of Nashville and Davidson County, do hereby certify that the foregoing is a true and exact copy of **Section 16.05** of the Charter of The Metropolitan Government of Nashville and Davidson County, approved in referendum on June 28, 1962, and amended on October 21, 1965; November 8, 1966; August 5, 1971; November 7, 1972; November 5, 1974; November 6, 1976; November 7, 1978; November 4, 1980; August 4, 1983; November 4, 1986; March 8, 1988; August 1, 1991; September 5, 1991; November 3, 1992; November 8, 1994; November 5, 1996; August 7, 2003; November 7, 2006; August 2, 2007; November 4, 2008; and November 2, 2010.

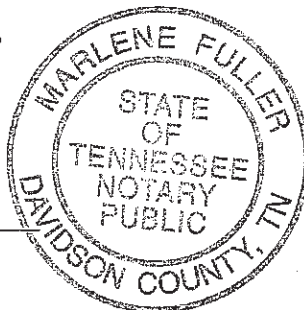
WITNESS MY HAND and the Seal of The Metropolitan Government of Nashville and Davidson County, Tennessee, this 7th day of January, 2011.


Metropolitan Clerk

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

Sworn to and subscribed before me,
by Marilyn S. Swing this 7th
of January, 2011.


Notary Public



My Commission expires: 07-08-2013

Sec. 8.202. - Responsibility and powers of department.

The department of the metropolitan police shall be responsible within the area of the metropolitan government for the preservation of the public peace, prevention and detection of crime, apprehension of criminals, protection of personal and property rights and enforcement of laws of the State of Tennessee and ordinances of the metropolitan government.³ The director and other members of the metropolitan police force shall be vested with all the power and authority belonging to the office of constable by the common law and also with all the power, authority and duties which by statute may now or hereafter be provided for police and law enforcement officers of counties and cities.

3. Designation of police department, rather than sheriff as principal conservator of the peace is a valid exercise of power under T.C.A., § 6-3701 et seq. *Metropolitan Government v. Poe*, 215 Tenn. 53, 383 S.W. 2d 265 (1964).

CERTIFICATION

I, Marilyn S. Swing, being the duly appointed Metropolitan Clerk of The Metropolitan Government of Nashville and Davidson County, do hereby certify that the foregoing is a true and exact copy of **Section 8.202** of the Charter of The Metropolitan Government of Nashville and Davidson County, approved in referendum on June 28, 1962, and amended on October 21, 1965; November 8, 1966; August 5, 1971; November 7, 1972; November 5, 1974; November 6, 1976; November 7, 1978; November 4, 1980; August 4, 1983; November 4, 1986; March 8, 1988; August 1, 1991; September 5, 1991; November 3, 1992; November 8, 1994;. November 5, 1996; August 7, 2003; November 7, 2006; August 2, 2007; November 4, 2008; and November 2, 2010.

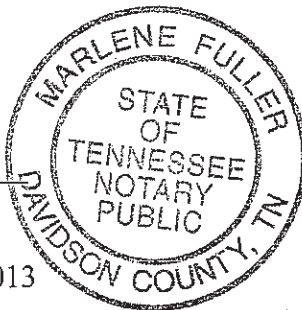
WITNESS MY HAND and the Seal of The Metropolitan Government of Nashville and Davidson County, Tennessee, this 7th day of January, 2011.


Metropolitan Clerk

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

Sworn to and subscribed before me,
by Marilyn S. Swing this 7th
of January, 2011.


Notary Public



My Commission expires: 07-08-2013

Exhibit 2

287(g) Memorandum of Agreement (October 2009)

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 Metropolitan Government of Nashville and Davidson County, by and through the Davidson County Sheriff's Office (DCSO), pursuant to which ICE delegates nominated, trained, certified, and authorized DCSO personnel to perform certain immigration enforcement functions as specified herein. It is the intent of the parties that these delegated authorities will enable the DCSO to identify and process immigration violators and conduct criminal investigations under ICE supervision, as detailed herein, within the confines of the DCSO's area of responsibility. The DCSO and ICE enter into this MOA in good faith and agree to abide by the terms and conditions contained herein.

I. PURPOSE

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 MOA sets forth the terms and conditions pursuant to which selected DCSO personnel (participating DCSO personnel) will be nominated, trained, and approved by ICE to perform certain functions of an immigration officer within the DCSO's area of responsibility. Nothing contained herein shall otherwise limit the jurisdiction and powers normally possessed by participating DCSO personnel as members of the DCSO. However, the exercise of the immigration enforcement authority granted under this MOA to participating DCSO personnel shall occur only as provided in this MOA.

II. AUTHORITY

Section 287(g) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1357(g) (1996), as amended by the Homeland Security Act of 2002, Public Law 107-296, authorizes the Secretary of DHS, 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 following: 1) the functions of an immigration officer that DHS is authorizing the participating DCSO personnel to perform; 2) the duration of the authority conveyed; 3) the supervisory requirements, including the requirement that participating DCSO personnel are subject to ICE supervision while performing immigration-related duties pursuant to this MOA; and 4) program information or data that the DCSO is required to collect as part of the operation of the program. For the purposes of this MOA, ICE officers will provide supervision for participating DCSO personnel only as to immigration enforcement and/or immigration investigative functions as authorized in this MOA. DCSO retains supervision of all other aspects of the employment and performance of duties by participating DCSO personnel.

The Davidson County authorities is expected to pursue to completion all criminal charges that caused the alien to be taken into custody and over which the Davidson County authorities has jurisdiction.

ICE will assume custody of an alien 1) who has been convicted of a State, local or Federal offense only after being informed by the alien's custodian that such alien has concluded service of any sentence of incarceration; 2) who has prior criminal convictions and when immigration detention is required by statute; and 3) when the ICE Detention and Removal Operations (DRO) Field Office Director (FOD) or his designee decides on a case-by-case basis to assume custody of an alien who does not meet the above criteria.

IV. DESIGNATION OF AUTHORIZED FUNCTIONS

Approved participating DCSO personnel will be authorized to perform immigration officer functions outlined in 287(g)(1) of the INA regarding the investigation, apprehension, or detention of aliens in the United States, subject to the limitations contained in the Standard Operating Procedures (SOP) in Appendix D to this MOA.

V. DETENTION AND TRANSPORTATION ISSUES

ICE retains sole discretion in determining how it will manage its limited detention resources and meet its mission requirements. ICE Field Office Directors may, in appropriate cases, decline to detain aliens whose detention is not mandated by Federal statute. ICE and the DCSO will prioritize the detention of aliens in conformity with ICE detention priorities. ICE reserves the right to detain aliens to the extent provided by law.

If ICE deems it necessary, the DCSO will enter into an Inter-Governmental Service Agreement (IGSA) with ICE pursuant to which the DCSO will provide, for a reimbursable fee, detention of incarcerated aliens in DCSO facilities, upon the completion of their sentences. If ICE and the DCSO enter into an IGSA, the DCSO must meet the applicable ICE National Detention Standards.

In addition to detention services, if ICE deems it necessary, the IGSA may include a transportation component for the transportation of all incarcerated aliens for a reimbursable fee. Under a transportation IGSA, the DCSO will transport all incarcerated aliens in its facilities who are subject to removal, upon completion of their sentences, to a facility or location designated by ICE. Reimbursement to the DCSO will occur only when the DCSO obtained the prior approval of ICE for the transportation. ICE will not reimburse if the DCSO did not obtain prior approval from ICE.

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

VI. NOMINATION OF PERSONNEL

The DCSO will nominate candidates for ICE training and approval under this MOA. All candidates must be United States citizens. The DCSO is responsible for conducting a criminal background check within the last five years for all nominated candidates. Upon request, the DCSO will provide all related information and materials it collected, referenced, or considered during the criminal background check for nominated candidates to ICE.

In addition to the DCSO background check, ICE will conduct an independent background check for each candidate. This background check 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). ICE reserves the right to query any and every national and international law enforcement database to evaluate a candidate's suitability to participate in the enforcement of immigration authorities under this MOA. Upon request by ICE, the DCSO will provide continuous access to disciplinary records of all candidates along with a written privacy waiver signed by the candidate allowing ICE to have continuous access to his or her disciplinary records.

The DCSO agrees to use due diligence to screen individuals nominated for training and agrees that individuals who successfully complete the training under this MOA will perform immigration officer functions authorized under 287(g) of the INA for a minimum of two years. If DCSO personnel under consideration are in a bargaining unit, that DCSO must, prior to the execution of the MOA, have an agreement with the exclusive representative that allows the designated officers to remain in their position for a minimum of two years. This requirement may be lifted solely at the discretion of ICE for good cause in situations that involve, among other things, imminent promotion, officer career development, and disciplinary actions. Failure by the DCSO to fulfill this commitment could jeopardize the terms of this MOA, and ICE reserves the right, under these circumstances, to take appropriate action as necessary, including terminating this MOA.

All DCSO candidates shall have knowledge of and have enforced laws and regulations pertinent to their law enforcement activities and their jurisdictions.

In the task force model setting, all DCSO task force officer candidates must be sworn/certified officers, must possess arrest authority, must be authorized to carry firearms, and must be employed full-time by the DCSO. Each DCSO candidate must certify that he/she is not prohibited from carrying a firearm pursuant to State or Federal law, including, but not limited to, the Lautenberg Amendment (18 U.S.C. § 922(g)(8) or (9)).

All DCSO candidates must be approved by ICE and must be able to qualify for access to appropriate DHS and ICE databases. Should a candidate not be approved, a qualified substitute candidate may be submitted. Such substitution must occur without delaying the start of training. Any future expansion in the number of participating DCSO personnel or scheduling of additional training classes may be based on an oral agreement between the parties and is subject to all the requirements of this MOA and the accompanying SOP.

VII. TRAINING OF PERSONNEL

ICE will provide participating DCSO personnel with Immigration Authority Delegation Program (IADP) training consistent with the accompanying SOP.

VIII. CERTIFICATION AND AUTHORIZATION

Before participating DCSO personnel receive authorization to perform immigration officer functions granted under this MOA, they must successfully complete the IADP training, as described in the accompanying SOP. The IADP will be provided by ICE instructors who will train participating DCSO personnel in the enforcement of Federal immigration laws and policies, the scope of the powers delegated pursuant to this MOA and civil rights and civil liberties practices. Participating DCSO personnel must pass an ICE examination after instruction. Upon completion of training, those DCSO personnel who pass the ICE examinations shall be deemed "certified" under this MOA.

ICE will certify in writing the names of those DCSO personnel who successfully complete training and pass all required test(s). Upon receipt of the certification, the ICE Special Agent in Charge (SAC) and/or the ICE FOD in the New Orleans Field Office will provide the participating DCSO personnel a signed authorization letter allowing the named DCSO personnel 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 letter to the DCSO. Only those certified DCSO personnel who receive authorization letters issued by ICE and whose immigration enforcement efforts are subject to a designated ICE supervisor may conduct immigration officer functions described in this MOA.

Along with the authorization letter, ICE will issue the certified DCSO personnel official Delegation of Authority credentials. Upon receipt of the Delegation of Authority credentials, DCSO personnel will provide ICE a signed receipt of the credentials on the ICE Record of Receipt - Property Issued to Employee (Form G-570).

Authorization of participating DCSO personnel to act pursuant to this MOA may be withdrawn at any time and for any reason by ICE or the DCSO, and must be memorialized in a written notice of withdrawal identifying an effective date of withdrawal and the personnel to which the withdrawal pertains. Such withdrawal may be effectuated immediately upon notice to the other party. The DCSO and the ICE SAC and/or the ICE FOD in the New Orleans Field Office will be responsible for notification of the appropriate personnel in their respective agencies. The termination of this MOA shall constitute immediate revocation of all immigration enforcement authorizations delegated hereunder.

The DCSO will immediately notify ICE when any certified and/or authorized DCSO personnel is no longer participating in the 287(g) program so that appropriate action can be taken, including termination of user account access to DHS and ICE systems.

IX. COSTS AND EXPENDITURES

Participating agencies are responsible for personnel expenses, including, but not limited to, salaries and benefits, local transportation, and official issue material. The DCSO is responsible for the salaries and benefits, including overtime, of all of its personnel being trained or performing duties under this MOA and of those personnel performing the regular functions of the participating DCSO personnel while they are receiving training. The DCSO will cover the costs of all DCSO personnel's travel, housing, and per diem affiliated with the training required for participation in this MOA. ICE is responsible for the salaries and benefits of all of its personnel, including instructors and supervisors.

If ICE determines the training provides a direct service for the Government and it is in the best interest of the Government, the Government may issue travel orders to selected personnel and reimburse travel, housing, and per diem expenses only. The DCSO remains responsible for paying salaries and benefits of the selected personnel.

ICE will provide instructors and training materials.

Subject to the availability of funds, ICE will 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 DCSO personnel at each DCSO facility with an active 287(g) program. Only participating DCSO personnel certified by ICE may use this equipment. ICE will also provide the necessary technological support and software updates for use by participating DCSO 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 SAC and/or the ICE FOD in the New Orleans Field Office.

The DCSO is responsible for covering all expenses at the DCSO facility regarding cabling and power upgrades. If the connectivity solution for the DCSO is determined to include use of the DCSO's own communication lines - (phone, DSL, site owned T-1/T-3, etc), the DCSO will be responsible for covering any installation and recurring costs associated with the DCSO line.

The DCSO is responsible for providing all administrative supplies, such as paper, toner, pens, pencils, or other similar items necessary for normal office operations. The DCSO is also responsible for providing the necessary security equipment, such as handcuffs, leg restraints and flexi cuffs, etc.

Also, if ICE deems it necessary, the DCSO will provide ICE, at no cost, with an office within each participating DCSO facility for ICE supervisory employees to work.

X. ICE SUPERVISION

Immigration enforcement activities conducted by the participating DCSO personnel will be supervised and directed by ICE supervisory officers or designated ICE team leaders. Participating DCSO personnel are not authorized to perform immigration officer functions except when working under the supervision or guidance of ICE. To establish supervisory and other administrative responsibilities, the SAC/FOD will specify the supervisory and other administrative responsibilities in an accompanying agreed-upon SOP.

Participating DCSO 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. The actions of participating DCSO personnel will be reviewed by 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 individual training or guidance.

For purposes of this MOA, ICE officers will provide supervision of participating DCSO personnel only as to immigration enforcement functions and for investigations conducted in conjunction to this authority. The DCSO retains supervision of all other aspects of the employment of and performance of duties by participating DCSO personnel.

In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating DCSO 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 DCSO personnel will be expected or required to violate or otherwise fail to maintain the DCSO's rules, standards, or policies, or be required to fail 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 or a DHS or ICE policy and the DCSO's rules, standards, or policies, the conflict shall be promptly reported to the SAC and/or the FOD in the New Orleans Field Office, or designees, and the DCSO, or designee, when circumstances safely allow the concern to be raised. The SAC and/or the FOD in the New Orleans Field Office and the DCSO shall attempt to resolve the conflict.

XI. REPORTING REQUIREMENTS

ICE does not require the DCSO to provide statistical or arrest data above what is entered into ENFORCE; however, ICE reserves the right to request the DCSO provide specific tracking data and/or any information, documents, or evidence related to the circumstances of a particular alien's arrest. ICE may use this data to compare and verify ICE's own data, and to fulfill ICE's statistical reporting requirements, or to assess the progress and success of the DCSO's 287(g) program.

XII. LIABILITY AND RESPONSIBILITY

If any participating DCSO personnel are the subject 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 DCSO shall, to the extent allowed by State law, immediately notify the local point of contact for the ICE Office of Professional Responsibility (OPR) and the SAC/FOD 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, as specified herein, by participating DCSO personnel shall be handled as described below.

Except as otherwise noted in this MOA or allowed by Federal law, and to the extent required by 8 U.S.C. § 1357(g)(7) and (8), the DCSO will be responsible and bear the costs of participating DCSO personnel with regard to their property or personal expenses incurred by reason of death, injury, or incidents giving rise to liability.

Participating DCSO personnel will be treated as Federal employees only 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 on behalf of ICE as authorized by this MOA, 8 U.S.C. § 1357(g)(7); 28 U.S.C. § 2671. It is the understanding of the parties to this MOA that participating DCSO personnel will enjoy the same defenses and immunities for their in-scope acts that are 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 DCSO 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 SAC and/or the FOD in the New Orleans Field Office. Requests should be in the form of a written memorandum prepared by the defendant addressing each and every allegation in the complaint, explaining as well as admitting or denying each allegation against the defendant. Requests for representation must be presented to the ICE Office of the Chief Counsel at 1010 East Whatley Road, Oakdale, Louisiana 71463.. 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 Headquarters 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 DCSO personnel.

The DCSO agrees to cooperate with any Federal investigation related to this MOA to the full extent of its available powers, including providing access to appropriate databases, personnel, and documents. Failure to do so may result in the termination of this MOA. Failure of an officer to cooperate in any Federal investigation related to this MOA may result in revocation of such individual's authority provided under this MOA. The DCSO agrees to cooperate with Federal personnel conducting reviews to ensure compliance with the terms of this MOA and to provide access to appropriate databases, personnel, and documents necessary to complete such compliance review. It is understood that information provided by any DCSO 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), and its progeny.

As the activities of participating DCSO personnel under this MOA are undertaken under Federal authority, the participating DCSO 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.

The DCSO and ICE are each responsible for compliance with the Privacy Act of 1974, as applicable, and related system of records notices with regard to data collection and use of information under this MOA. The applicable Systems of Record Notice for privacy compliance is the ENFORCE Systems of Records Notice, 71 FR 13987, dated March 20, 2006.

XIII. COMPLAINT PROCEDURES

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

XIV. CIVIL RIGHTS STANDARDS

Participating DCSO 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.

XV. INTERPRETATION SERVICES

Participating DCSO 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 DCSO, as needed.

The DCSO will maintain a list of qualified interpreters or companies it contracts with to provide such interpreters. Participating law 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.

XVI. COMMUNICATION

The ICE SAC and/or the FOD in the New Orleans Field Office, and the DCSO shall meet at least annually, and as needed, to review and assess the immigration enforcement activities conducted

by the participating DCSO personnel, and to ensure compliance with the terms of this MOA. When necessary, ICE and the DCSO may limit the participation of these meetings in regards to non-law enforcement personnel. The attendees will meet in Nashville, Tennessee at locations to be agreed upon by the parties, or via teleconference. The 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 immigration enforcement activity in DCSO's jurisdiction. An initial review meeting will be held no later than nine months after certification of the initial class of participating DCSO personnel under Section VIII, above.

XVII. COMMUNITY OUTREACH

The DCSO 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 DCSO's request. Nothing in this MOA shall limit ICE's own community outreach program.

XVIII. RELEASE OF INFORMATION TO THE MEDIA AND OTHER THIRD PARTIES

The DCSO 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. It is the practice of ICE to provide a copy of this MOA, only after it has been signed, to requesting media outlets; the DCSO is authorized to do the same.

The DCSO agrees to coordinate with ICE prior to releasing any information related to, or exchanged under, this MOA, including any SOPs developed for the implementation of this MOA. If ICE determines that any requested records are protected from public disclosure/ not appropriate for public disclosure/ law enforcement sensitive under federal law, ICE will provide the DCSO with the legal authority that makes such records protected from public disclosure under federal law. The DCSO will not release any records that it agrees are protected from disclosure under federal laws, regulations, or executive orders. If there is a good faith disagreement between the DCSO and ICE regarding the public nature of such records, the DCSO may release such records; provided, however, that DCSO will release such records only after notifying ICE of the date the DCSO intends to release the records so that ICE may seek a judicial order, stay, or other intervention barring release on the proposed date.

The release of statistical information regarding the 287(g) program must be coordinated with the ICE Office of Public Affairs. The DCSO hereby agrees to coordinate with ICE regarding information to be released to the media regarding actions taken under this MOA. In the task force model setting, 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 DCSO for this purpose are identified in Appendix C.

Appendix B to this MOA describes the complaint procedures available to members of the public regarding actions taken by participating DCSO personnel pursuant to this agreement.

XIX. MODIFICATIONS TO THIS MOA

Modifications to this MOA must be proposed in writing and approved and signed by the signatories. Modification to Appendix D shall be done in accordance with the procedures outlined in the SOP.

XX. POINTS OF CONTACT

ICE and DCSO points of contact for purposes of this MOA are identified in Appendix A. Points of contact (POC) can be updated at any time by providing a revised Appendix A to the other party to this MOA.

XXI. DURATION AND TERMINATION OF THIS MOA

This MOA will remain in effect for three (3) years from the date of signing unless terminated earlier by either party. At the expiration of the three year effective period, ICE and the DCSO shall review the MOA and modify, extend, or permit the MOA to lapse. During the MOA's effective period, 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.

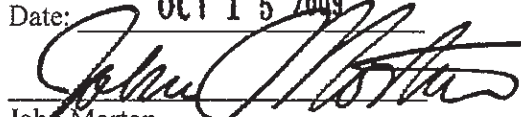
Either party, upon written or oral notice to the other party, may temporarily suspend activities under this MOA when resource constraints or competing priorities necessitate such suspension. Notice of termination or suspension by ICE shall be given to the DCSO.

Notice of termination or suspension by the DCSO shall be given to the SAC and/or the FOD in the New Orleans Field Office. Upon a good faith determination that the DCSO is not fulfilling its duties, ICE shall notify the DCSO, in writing, and inform the DCSO that it has 90 days to demonstrate a continued need for 287(g) program services. If this continued need is not demonstrated by the DCSO, the authorities and resources given to the DCSO 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 DCSO.

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.

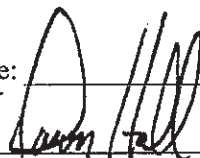
By signing this MOA, each party represents it is fully authorized to enter into this MOA, accepts the terms, responsibilities, obligations, and limitations of this MOA, and agrees to be bound thereto to the fullest extent allowed by law.

Date: OCT 15 2009



John Morton
Assistant Secretary
Immigration and Customs Enforcement
Department of Homeland Security

Date: 10-8-09



Daron Hall
Sheriff
Davidson County Sheriff's Office
Nashville, Tennessee

APPENDIX A
POINTS OF CONTACT

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

For the DCSO:

John L. Ford, III, Chief Deputy
Davidson County Sheriff's Office
506 Second Avenue North
Nashville, TN 37201
(615) 862-8955
jford@dcso.nashville.org

For ICE DRO:

Gerald B. Smith
Assistant Field Office Director
827 Forrest Avenue
Gadsden, AL 35901
(256) 543-8154 x 233

APPENDIX B
COMPLAINT PROCEDURE

This Memorandum of Agreement (MOA) is between the US Department of Homeland Security's Immigration and Customs Enforcement (ICE) and the Davidson County Sheriff's Office (DCSO), pursuant to which selected DCSO personnel are authorized to perform immigration enforcement duties in specific situations under Federal authority. As such, the training, supervision, and performance of participating DCSO personnel pursuant to the MOA, as well as the protections for U.S. citizens' and aliens' 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, certification, and authorization of certain DCSO 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 DCSO and be handled in accordance with the DCSO's Manual of Policy and Procedures, or equivalent rules, regulations, or procedures.

If any participating DCSO personnel are the subject of a complaint or allegation involving the violation of the terms of this MOA or a complaint or allegation of any sort that may result in that individual receiving employer discipline or becoming the subject of a criminal investigation or civil lawsuit, the DCSO shall, to the extent allowed by State law, immediately notify ICE of the existence and nature of the 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. The ICE notifications should be made to the SAC and the Office of Professional Responsibility (OPR) points of contact in New Orleans, Louisiana. Complaints regarding the exercise of immigration enforcement authority by participating DCSO personnel shall be handled as described below.

The DCSO will also handle complaints filed against DCSO personnel who are not designated and certified pursuant to this MOA but are acting in immigration functions in violation of this MOA. Further, any such complaints regarding non-designated DCSO personnel shall be forwarded to the SAC or the FOD in the New Orleans Field Office.

In order to simplify the process for the public, complaints against participating DCSO personnel relating to their immigration enforcement can be reported in the following manner "Complaint and Allegation Reporting Procedures."

1. Complaint and Allegation Reporting Procedures

Complaint reporting procedures shall be disseminated by the DCSO 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. Such reporting procedures shall also be included within facility manuals for detainees who have been processed under the 287(g) program. Such material must include up-to-date contact information necessary to file the complaint.

Complaints will be accepted from any source (e.g., ICE, DCSO, participating DCSO personnel, inmates, and the public). ICE will immediately forward a copy of the complaint to the DHS Office for Civil Rights and Civil Liberties (CRCL) Review and Compliance.

Complaints can be reported to Federal authorities as follows:

- A. Telephonically to the DHS Office of the Inspector General (DHS OIG) at the toll free number 1-800-323-8603, or
- B. Telephonically to the ICE OPR at the Joint Intake Center (JIC) in Washington, D.C., at the toll-free number 1-877-246-8253, email Joint.Intake@dhs.gov, or
- C. Via mail as follows:
 - Department of Homeland Security
 - Immigration and Customs Enforcement
 - Office of Professional Responsibility
 - P.O. Box 14475
 - Pennsylvania Avenue NW
 - Washington D.C. 20044

2. Review of Complaints

All complaints or allegations (written or oral) reported to the DCSO directly that involve DCSO personnel with ICE delegated authority will be reported to ICE OPR. ICE OPR will verify participating personnel status under the MOA with the assistance of the SAC of the ICE Office of Investigations in New Orleans, Louisiana. Complaints received by any ICE entity will be reported directly to ICE OPR as per existing ICE policies and procedures.

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

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

3. Complaint and Allegations Resolution Procedures

Upon receipt of any complaint or allegation, 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 the reporting requirements as stated above and as they relate to the DHS OIG and CRCL and/or the DOJ CRD. Complaints will be resolved using the existing procedures, supplemented as follows:

A. Referral of Complaints or Allegations to the DCSO's Internal Investigations Unit.

The ICE OPR will refer complaints, as appropriate, involving DCSO personnel to the DCSO's Internal Investigations Unit for resolution. The Chief Deputy will inform ICE OPR of the disposition and resolution of any complaints or allegations against DCSO's participating officers.

B. Interim Action Pending Complaint Resolution

When participating DCSO personnel are under investigation for any reason that could lead to disciplinary action, demotion, or dismissal, or are alleged to have violated the terms of this MOA, ICE may revoke that individual's authority and have that individual removed from participation in the activities covered under the MOA.

C. Time Parameters for Resolution of Complaints or Allegations

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

D. Notification of Resolution of a Complaint or Allegation

ICE OPR will coordinate with the DCSO's Internal Investigations Unit to ensure notification as appropriate to the ICE SAC in New Orleans, Louisiana, the subject(s) of a complaint, and the person filing the complaint regarding the resolution of the complaint.

These Complaint Reporting and Allegation Procedures are ICE's internal policy and may be supplemented or modified by ICE unilaterally. ICE will provide DCSO with written copies of any such supplements or modifications. These Complaint Reporting and Allegation Procedures apply to ICE and do not restrict or apply to other investigative organizations within the federal government.

APPENDIX C

PUBLIC INFORMATION POINTS OF CONTACT

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

For the DCSO:

Karla Weikal, Director of Communications
Davidson County Sheriff's Office
506 Second Avenue North
Nashville, TN 37201
(615) 862-8226
kweikal@dcsso.nashville.org

For ICE:

Temple Black
Public Affairs Officer
Office of Public Affairs and Internal Communication
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
1250 Poydras Street, Suite 2200
New Orleans, LA 70113
(504) 310-8887

APPENDIX D

STANDARD OPERATING PROCEDURE (SOP)

The purpose of this appendix is to establish standard, uniform procedures for the implementation and oversight of the 287(g) delegation of authority program within the SAC/FOD area of responsibility. This appendix can be modified only in writing and by mutual acceptance of the SAC/FOD, the Sheriff of Davidson County, the ICE Office of State and Local Coordination (OSLC) and the ICE Office of the Principal Legal Advisor (OPLA).

There are two models for the 287(g) program, a Task Force Officer (TFO) model or a Detention model. Pursuant to this MOA, DCSO has been delegated authorities under the Detention model as outlined below.

Prioritization:

ICE retains sole discretion in determining how it will manage its limited resources and meet its mission requirements. To ensure resources are managed effectively, ICE requires the DCSO to also manage its resources dedicated to 287(g) authority under the MOA. To that end, the following list reflects the categories of aliens that are a priority for arrest and detention with the highest priority being Level 1 criminal aliens. Resources should be prioritized to the following levels:

- ☐ **Level 1** – Aliens who have been convicted of or arrested for major drug offenses and/or violent offenses such as murder, manslaughter, rape, robbery, and kidnapping;
- ☐ **Level 2** – Aliens who have been convicted of or arrested for minor drug offenses and/or mainly property offenses such as burglary, larceny, fraud, and money laundering; and
- ☐ **Level 3** – Aliens who have been convicted of or arrested for other offenses.

Training:

The 287(g) training program, the **Immigration Authority Delegation Program (IADP)**, will be taught by ICE instructors and tailored to the immigration functions to be performed. ICE Office of Training and Development (OTD) will proctor examinations during the IADP. The DCSO nominee must pass each examination with a minimum score of 70 percent to receive certification. If the DCSO nominee fails to attain a 70 percent rating on an examination, the DCSO nominee will have one opportunity to remediate the testing material and re-take a similar examination. During the entire duration of the IADP, the DCSO nominee will be offered a maximum of one remediation examination. Failure to achieve a 70 percent on any two examinations (inclusive of any remediation examination), will result in the disqualification of the DCSO nominee and their discharge from the IADP.

Training will include, among other topics: (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 obligation 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 DCSO 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. Local training on relevant issues will be provided as needed by ICE supervisors or designated ICE team leaders. An OSLC designated official shall, in consultation with OTD and local ICE officials, review on an annual basis and, if needed, refresh training requirements.

Trained DCSO personnel will receive, as needed, a DHS email account and access to the necessary DHS applications. The use of the information technology (IT) infrastructure and the DHS/ICE IT security policies are defined in the Interconnection Security Agreement (ISA). The ISA is the agreement between ICE Chief Information Security Officer (CISO) and DCSO Designated Accreditation Authority (DAA). DCSO agrees that each of its sites using ICE-provided network access or equipment will sign the ISA, which defines the IT policies and rules of behavior for each user granted access to the DHS network and applications. Failure to adhere to the terms of the ISA could result in the loss of all user privileges.

Data Collection:

ENFORCE is the primary processing system for alien removals and is the main resource for statistical information for the 287(g) program. All ENFORCE entries must be completed in accordance with established ICE policies and adhere to OSLC guidance.

ICE does not require the DCSO to provide statistical or arrest data above what is entered into ENFORCE; however, ICE reserves the right to request specific tracking or arrest data be maintained and provided for comparison and verification with ICE's own data and statistical information. This data may also be used for ICE's statistical reporting requirements or to assess the progress and success of the DCSO's 287(g) program.

The DCSO and ICE are each responsible for compliance with the Privacy Act of 1974, as applicable, and related system of records notices with regard to data collection and use of information under this MOA. The applicable Systems of Record Notice for privacy compliance is the ENFORCE Systems of Records Notice, 71 FR 13987, dated March 20, 2006.

DETENTION MODEL:

Participating DCSO personnel performing immigration-related duties pursuant to this MOA will be DCSO officers assigned to detention operations supported by ICE. Those participating DCSO personnel will exercise their immigration-related authorities only during the course of their normal duties while assigned to DCSO jail/correctional facilities. Participating DCSO personnel will identify and remove criminal aliens that reside within the DCSO's jurisdiction pursuant to the tiered level of priorities set forth in Appendix D's "Prioritization" section.

The participating DCSO personnel are authorized to perform the following functions as allowed by 287(g) of the INA for the Detention Model:

- The power and authority to interrogate any 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 any removable alien or those aliens who have been arrested for violating a Federal, State, or local offense;
- The power and authority to serve warrants of arrest for immigration violations pursuant to INA § 287(a) and 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, including fingerprinting, photographing, and interviewing of aliens, 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 § 239, 8 C.F.R. § 239.1; INA § 238, 8 C.F.R. § 238.1; INA § 241(a)(5), 8 C.F.R. § 241.8; INA § 235(b)(1), 8 C.F.R. § 235.3) including the preparation of a 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 (INA § 236, INA § 287, and 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 (INA § 287(g)(1) and 8 C.F.R. § 287.5(c)(6)) arrested aliens subject to removal to ICE-approved detention facilities.

As noted under Appendix D's "Prioritization" section, ICE requires the DCSO to focus its use of the 287(g) program in accord with ICE's priorities.

Supervision:

A 287(g) delegation of authority detention model is designed to identify and remove aliens amenable to removal that are incarcerated within the DCSO's detention facilities pursuant to the tiered level of priorities set forth in Appendix D's "Prioritization" section. The following

identifies each entity's roles and responsibilities. These roles and responsibilities include, but are not limited to:

The DCSO shall provide notification to the ICE supervisor of any detainers placed under 287(g) authority within 24 hours.

The DCSO shall coordinate transfer of detainees processed under 287(g) authority in a timely manner. Prior to initiating the transfer of 287(g) arrests from the Sheriff's custody to the custody of ICE under the provisions of the DCSO Intergovernmental Service Agreement (IGSA) with ICE, DCSO must obtain detention authorization from the ICE supervisor, or his designee, in accordance with the MOA. No 287(g) arrests may be booked under the ICE IGSA by DCSO without an I-203A (Order to Detain Aliens) signed by the ICE supervisor, or his designee.

The DCSO is responsible for ensuring proper record checks have been completed, obtaining the necessary court/conviction documents, and, upon arrest, ensuring that the alien is processed through ENFORCE/IDENT and served with the appropriate charging documents.

The DCSO must immediately report all encounters of an individual who claims U.S. citizenship to the FOD through their chain of command. The FOD shall make the appropriate notification to DRO headquarters.

The ICE supervisor is responsible for requesting alien files, reviewing alien files for completeness, approval of all arrests, and TECS checks and input. The FOD office is responsible for providing the DCSO with current and updated DHS policies regarding the arrest and processing of illegal aliens.

On a regular basis, the ICE supervisors are responsible for conducting an audit of the IDENT/ENFORCE computer system entries and records made by the DCSO's officers. Upon review and auditing of the IDENT/ENFORCE computer system entries and records, if errors are found, the ICE supervisor will communicate those errors in a timely manner to the responsible official for DCSO. The ICE supervisor will notify the DCSO of any errors in the system and the DCSO is responsible for submitting a plan to ensure that steps are taken to correct, modify, or prevent the recurrence of errors that are discovered.

Custody decisions will be made on an individualized case basis consistent with the above priorities. Whenever deemed appropriate, DCSO through the ICE supervisor will utilize an alternative to detention for lower level violators. Such alternatives may include but need not be limited to electronic monitoring and/or personal reporting schedule as outlined on Form I-220A (Order of Release on Recognizance).

Nominated Personnel:

All DCSO jail enforcement officer candidates shall have specific experience that should consist of having supervised inmates. Candidates must show that they have been trained on and concerned with maintaining the security of the facility. Candidates must have enforced rules and regulations governing the facility on inmate accountability and conduct. Candidates must also show an ability to meet and deal with people of differing backgrounds and behavioral patterns.

SIGNATURE PAGE
Davidson County 287(g) MOA

IN WITNESS WHEREOF, the parties have by their duly authorized representatives set their signatures.

**METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY**

APPROVED AS TO AVAILABILITY
OF FUNDS:

Richard Riebeling
Richard Riebeling, Director
Department of Finance

10/8/09
Date

APPROVED AS TO RISK AND INSURANCE:

TJ CW
Director of Insurance

10/8/09
Date

APPROVED AS TO FORM AND
LEGALITY:

Kathleen
Metropolitan Attorney

10/8/09
Date



Marilyn D. Swing
Metropolitan Clerk *RS 2009-997*

10/20/09
Date

Exhibit 3

**Certified Copy of Metro Council
Resolution 2009-997
(Approved Oct. 23, 2009)**

RESOLUTION NO. RS2009-997

A resolution approving an agreement between the United States Bureau of Immigration and Customs Enforcement and The Metropolitan Government of Nashville and Davidson County authorizing the training and use of Davidson County Sheriff's Office personnel to identify and process immigration offenders in DCSO jail and correctional facilities.

WHEREAS, the United States Bureau of Immigration and Customs Enforcement (ICE), a component of the United States Department of Homeland Security, is authorized under 8 U.S.C. 1357(g) to enter into written agreements with any political subdivision of a State so that qualified personnel can perform certain functions of immigration officers; and,

WHEREAS, the Davidson County Sheriff's Office will perform such immigration officer functions, in coordination with ICE, as specified in the Agreement attached hereto and incorporated herein; and,

WHEREAS, it is to benefit the citizens of The Metropolitan Government of Nashville and Davidson County that such Agreement be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

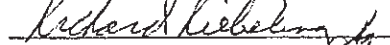
Section 1. That the Agreement between The Metropolitan Government of Nashville and Davidson County and the United States Bureau of Immigration and Customs Enforcement authorizing Davidson County Sheriff's Office personnel to perform certain functions of immigration officers, attached hereto and incorporated herein, is hereby approved.

Section 2. That any amendments to the terms of the Agreement must be approved by resolution of the Metropolitan Council receiving twenty-one affirmative votes.


Section 3. That any funds received pursuant to this Agreement shall be appropriated to the Davidson County Sheriff's Office.

Section 4. That this resolution shall take effect from and after its adoption, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

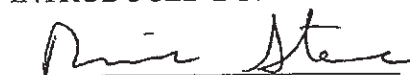
APPROVED AS TO THE
AVAILABILITY OF FUNDS:

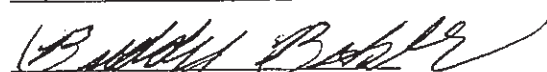

Richard M. Riebeling, Director
Department of Finance


APPROVED AS TO FORM AND
LEGALITY:


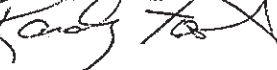

Kathleen Evans
Metropolitan Attorney

INTRODUCED BY:






Members of the Council

ORIGINAL

METROPOLITAN COUNTY COUNCIL

Resolution No. RS2009-997

A resolution approving an agreement between the United States Bureau of Immigration and Customs Enforcement and The Metropolitan Government of Nashville and Davidson County authorizing the training and use of Davidson County Sheriff's Office personnel to identify and process immigration offenders in DCSO jail and correctional facilities.

Introduced OCT 20 2009

Amended _____

Adopted OCT 20 2009

Approved OCT 23 2009

By LC 1 + L
Metropolitan Mayor

2009 OCT 13 PM 1:46

FILED
METROPOLITAN
COUNTY CLERK

CERTIFICATION

I, Marilyn S. Swing, being the duly appointed Metropolitan Clerk of The Metropolitan Government of Nashville and Davidson County, do hereby certify that the foregoing is a true and exact copy of Resolution No. RS2009-997 of said Metropolitan Government, which resolution was adopted on October 20, 2009, at the meeting of the Metropolitan Council held on that date, and is now recorded in Book No. M66, Page 75.

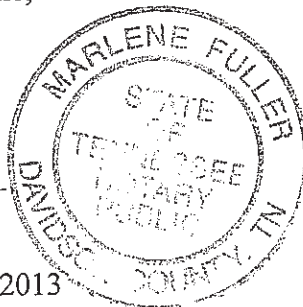
WITNESS MY HAND and the Seal of The Metropolitan Government of Nashville and Davidson County, Tennessee, this 7th day of January, 2011.

Marilyn S. Swing
Metropolitan Clerk

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Sworn to and subscribed before me,
by Marilyn S. Swing, this 7th
day of January, 2011.

Marlene Fuller
Notary Public



My Commission expires: 07-08-2013