

MEMORANDUM OF AGREEMENT
between
U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS
and
U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER
PROTECTION

I. Parties

U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) hereby enters into an agreement with U.S. Department of Homeland Security, U.S. Customs and Border Protection (CBP) regarding the temporary detail of CBP law enforcement personnel to assist with ERO interior enforcement efforts.

II. Authority

This MOA is authorized under the provisions of the Homeland Security Act of 2002, as amended, 116 Stat. 2135, Pub. L. No. 107-296, Nov. 25, 2002; 8 U.S.C. § 1357 (Powers of Immigration Officers and Employees); 8 .C.F.R. § 287.5 (Exercise of Power by Immigration Officers); and 5 U.S.C. § 3341, Details; within Executive or military departments.

III. Purpose

The purpose of this MOA is to document approval of, and terms and conditions for, the detail of (b)(7)(E) Border Patrol Agents (BPAs) and (b)(7)(E) Customs and Border Protection Officers (CBPOs) to ERO field offices, to enhance ERO Criminal Alien Program teams, Fugitive Operation teams, and/or Alternatives to Detention teams, at the discretion of the Field Office Directors.

As of November 1, 2019, there were approximately 590,000 immigration fugitives residing in the United States. The United States continues to experience a high volume of aliens presenting themselves at ports of entry (POEs) on the Southwest Border without valid immigration documents, entering illegally between the POEs, and overstaying their lawful period of admission. Many of these aliens are often released into the interior of the United States while they wait—sometimes for years—for final resolution of their immigration proceedings. Many never appear for their hearings and others fail to depart after receiving a final order of removal.

CBP will provide personnel for the purpose of interagency cooperation with the common goal of enhanced integrity of the immigration system, protecting public safety, and national security. The CBP resources will provide a greater capability to arrest and remove fugitive aliens, and deter further illegal entries.

CBP and the immigration officers from CBP who are detailed to ERO will provide and gain specialized knowledge and strengthen the interagency partnership as part of their detail to ERO to perform interior immigration law enforcement duties. At present, CBP is responsible for border security and interdicting those attempting to enter the U.S. without inspection or without proper legal documentation.

ERO uses a variety of investigative processes, techniques and expertise to identify and arrest aliens including surveillance, intelligence sharing, liaison with other law enforcement and government agencies, use of subpoenas, use of tips and informants, and research using detailed open-source and governmental records indices to ascertain the whereabouts or the alienage of individuals. While CBP and ICE share a common immigration enforcement mission, ERO's legal obligations in effectuating arrests differ somewhat from CBP in that they generally occur in urban or institutional settings, requiring additional 4th Amendment considerations such as consent and curtilage, or liaison with jail and prison staff, in addition to operational techniques such as executing entries into worksites or inspecting the legal status of those in a jail setting. As a result, a detail to ERO will help CBP and CBP personnel enhance their law enforcement capabilities.

This knowledge and experience will benefit CBP in establishing working level contacts with ERO personnel for information sharing and intelligence gathering purposes and will expose CBP personnel to other law enforcement agencies for commensurate purposes. Additionally, CBP and CBP personnel will gain substantive knowledge in conducting immigration enforcement in urban areas, a skillset that will prove useful in instances in which illegal border crossers are tracked in to urban border areas to evade detection. CBP personnel will also learn to use federal records indices currently used by ICE ERO and not regularly used by CBP agents and officers. Given the significant overlap in the immigration enforcement missions of CBP and ICE, experience with ERO will benefit CBP personnel by exposing them to the array of law enforcement investigative techniques utilized by ERO. Experience utilizing such techniques are likely to provide a benefit to CBP when the detailed personnel return to the law enforcement duties that they perform at their home locations.

CBP personnel will enhance their training and experience in encountering aliens out of legal status from all immigration backgrounds. At present, both CBP and ERO personnel take enforcement action upon those who are aggravated felons/administrative removal cases, immigration fugitives, Visa Waiver Program violators, non-immigrant visa violators, deferred inspection cases, entry without inspection cases, stipulated removals, and all other aliens subject to appropriate enforcement action, in accordance with their immigration or criminal history. As a result of their mission at the border, CBP also encounters and acts upon aliens who have entered without inspection and/or presented themselves for admission without proper documentation. A detail to ERO will expose CBP personnel to a broader scope of immigration violators and will enhance their skill set as immigration law enforcement officers.

IV. Responsibilities

a. CBP Responsibilities

CBP employees will be detailed to ERO at-large (e.g. Fugitive Operations, including the Mobile Criminal Alien Teams) and ERO Criminal Alien Program teams, as determined by ERO management.

CBP personnel detailed to ERO will operate within the parameters of current CBP law enforcement duties under Title 8 and Title 19 of the U.S. Code and will exercise the full scope of immigration enforcement duties and applicable regulations. At no time will CBP personnel be tasked with performing any function outside of their scope of authority under 8 C.F.R. § 287.5 as referenced above.

Under ERO supervision, CBP personnel will perform law enforcement duties such as conducting interviews of suspected aliens, determining alienage, conducting arrests, issuing immigration detainers or charging documents, making custody determinations, and conducting records checks in furtherance of DHS immigration enforcement efforts.

CBP personnel detailed to ERO will abide by and adhere to all policies and procedures regarding conduct promulgated by their respective employing agencies. Any allegation of misconduct pertaining to CBP personnel detailed to ERO during the performance of functions pursuant to this detail, will be investigated by the individual's employing agency, as well as the ICE Office of Professional Responsibility (OPR), in accordance with their respective policies. CBP employees who are detailed to assist with this effort may be scheduled to work non-day time hours and will conduct their duties at the behest and oversight of ERO personnel.

CBP personnel will submit all requests for leave (annual, sick, Family and Medical Leave Act, etc.) to their ICE supervisor for authorization. CBP personnel will remain under their formal supervisor of record for purposes of annual evaluation.

CBP will provide personnel rosters to ICE ERO a minimum of 14 days in advance of the scheduled deployment of CBP personnel to enable the ICE Office of Chief Information Officer to create ICE email accounts for local area networks and grant all necessary systems account access to facilitate enforcement activities.

b. ERO Responsibilities

ERO will provide CBP the locations of the temporary duty locations at minimum of 14 days in advance to allow for efficient resourcing and planning.

ERO will provide CBP with a complete Concept of Operations plan at least 14 days in advance of scheduled commencement of operations.

Prior to or within the first days of the detail, ICE will provide training to CBP agents and officers consisting of, at minimum, legal and policy based instruction on ERO field operations, field information systems, and the Orantes injunction. Additional training will include refresher training on interior enforcement application of constitutional protections, ERO policy and procedure, processing, and administrative tactical principles for ERO at-large teams.

The ERO Field Office Director or his or her designee (but not below the level of the Assistant Field Office Director, with direct oversight by a Supervisory Detention and Deportation Officer) will be responsible for the supervision of CBP personnel.

While employees will serve under the direct daily control of ERO supervision, they remain under the legal, administrative and disciplinary purview of their agency and agency supervision.

ERO managers will make necessary arrangements, if needed, for CBP personnel to conduct quarterly qualifications and use of force training as per CBP policy.

ERO managers will be responsible for documenting any injuries and/or accidents for CBP personnel detailed to their office.

ERO managers will verify with CBP the hours worked for each CBP agent or officer prior to the conclusion of the pay period.

ERO managers will provide CBP with evaluative comments and feedback at the conclusion of the detail for each CBP agent and officer for the purposes of annual evaluations of CBP personnel.

The workweek and hours of duty will be determined by ERO, subject to applicable federal regulations, agency policies, and relevant Collective Bargaining Agreement provisions as appropriate. ERO will ensure that the CBP employees are not assigned hours of duty that conflict with CBP's policies and procedures, and that conform to current Federal Laws such as the Border Patrol Act Pay Reform Act (BPAPRA), Customs Officer Pay Reform Act (COPRA), aggregate, and bi-weekly limitations on pay.

ERO shall grant access to all enforcement databases necessary to execute agent responsibilities within 3 work days of arrival.

V. Implementation, Extension, and Termination of Detail

The details shall begin on February 3, 2020, for 90 days until May 2, 2020.

This agreement is effective on the date that it is signed by both parties and will terminate upon conclusion of the 90-day detail. This agreement may be amended, extended, or terminated by mutual consent of both parties, with reasonable notice. The desire for such action by either party should be declared in writing at least 15 days' prior of the effective date for such action.

At the conclusion of the detail, ICE and CBP will evaluate the effectiveness of the operation and determine if an extension is warranted. Details may only be extended, with prior approval from the CBP, in increments of [REDACTED] days or less.

VI. Financial Responsibility

The detail shall be made on a non-reimbursable basis. CBP will be responsible for the salaries, benefits, vacation, sick leave and other compensation, including overtime, of their personnel detailed to ERO.

CBP will be made aware of any scheduled overtime for CBP personnel in order to maintain compliance with applicable law and limitations on pay.

All travel related expenses for CBP personnel participating in this enforcement initiative will be funded by CBP.

VII. Rules, Regulations, and Policies

Nothing in this MOA shall be construed as to conflict with current laws, regulations, or directives of the U.S. Department of Homeland Security. If a term of this MOA is inconsistent with such authority, that term shall be invalid to the extent of the inconsistency. The remainder of that term and all other terms of this MOA shall remain in effect.

Nothing in this MOA is intended to diminish or otherwise affect the authority of any agency to carry out its statutory, regulatory, or other official functions, nor is it intended to create any right or benefit, substantive or procedural, enforceable by law by any party against the United States, its agencies or offices, State agencies, or officers carrying out programs authorized under Federal Law or any other person.

Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, a review of this MOA may be conducted at any time. The Inspector General of the Department of Homeland Security, or any of his/her duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Parties to this MOA, whether written, printed, recorded, produced, or reproduced by any mechanical, magnetic, or other process or medium in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law.

This MOA and any associated annexes may be amended or revised at any time with the written agreement of both Parties.

Both Parties will make best efforts to amicably resolve any disputes that may arise under this agreement through discussions between them. If those views or mediation cannot be obtained or fail to resolve the matter, the issue will be elevated through respective management chains of resolution, and potentially to a common superior for decision.

The detailed employee is subject to all federal statutory and regulatory provisions that govern ethical and other standards of conduct, conflicts of interest, suitability, security, and limitations on political activity. The Federal Tort Claims Act and any other Federal tort liability statute shall apply to the detailee.

VIII. Points of Contacts

(b)(6), (b)(7)(C)

ICE ERO

Acting Deputy Assistant Director

Special Operations Division

(O) (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

US CBP OFO

Director

Enforcement Programs Division

(O) (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

US CBP USBP

Associate Chief

Law Enforcement Operations Directorate

Operations Planning Division

(O) (b)(6), (b)(7)(C)

IX. Approvals:

(b)(6), (b)(7)(C)

Mark A. Morgan
Acting Commissioner
U.S. Customs and Border Protection

1/13/2020
(Date)

(b)(6), (b)(7)(C)

Matthew T. Albence
Deputy Director and Senior Official Performing
the Duties of the Director
U.S. Immigration and Customs Enforcement

1/13/2020
(Date)