

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF HOMELAND SECURITY
AND
THE DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
REGARDING
THE SHARING OF INFORMATION ON IMMIGRATION CASES

I. PARTIES

The Parties to this Memorandum of Agreement (hereinafter "MOA") are the Department of Homeland Security, including its components, (hereinafter referred to as "DHS"), and the Department of Justice, Executive Office for Immigration Review (hereinafter referred to as "EOIR"), collectively, the "Parties."

II. PURPOSE

This MOA is intended to govern the exchange, use, safeguarding, and ownership of data exchanged between DHS and EOIR to support the Parties' respective missions including: immigration status verification, immigration investigation, appropriate immigration enforcement, and immigration processing and adjudication.

This MOA clarifies the authority for DHS and EOIR to exchange immigration case data and reiterates the security and privacy mechanisms established to protect this data. Under this MOA, both DHS and EOIR agree that access to immigration case data provided to the other Party is limited to that which is necessary to carry out their respective missions. This MOA supersedes prior information sharing agreements between DHS and EOIR.¹

DHS and EOIR information sharing initiatives not covered by this MOA such as the exchange of information with respect to litigation in Article III courts or one time data sharing necessary to respond to Congressional requests, as well as other authorized discrete releases of data, should proceed separate from the MOA through the Parties' authorized points of contact for the particular issue.

¹ Specifically, this MOA, which is defined to include its appendices, supersedes the 2004 Inter-Agency Agreement (IAA) between EOIR and U.S. Immigration and Customs Enforcement (ICE) Office of the Principal Legal Advisor, the 2008 IAA between EOIR and ICE Detention and Removal Office, and the 2009 IAA between EOIR and U.S. Citizenship and Immigration Services.

III. BACKGROUND

Information-sharing programs between DHS and EOIR strengthen DHS's immigration adjudication, status verification, and law enforcement mission. These programs will strengthen EOIR's mission to adjudicate immigration cases in a fair, expeditious, and uniform manner.

IV. AUTHORITY

The authorities that authorize or support this MOA are:

- Section 103 of the Immigration and Nationality Act (INA) (8 U.S.C. § 1103)
- Section 290 of the INA (8 U.S.C. § 1360);
- 5 U.S.C. § 552a, Privacy Act of 1974; to include the system of records notices (SORNs) that are further specified in Appendix A;
- 8 U.S.C. § 1373;
- 8 U.S.C. §§ 1365a and 1365b;
- 42 U.S.C. § 1320b-7;
- National Institutes of Standards and Technology (NIST) SP 800-47, Security Guide for Interconnecting Information Technology Systems;
- OMB Circular A-130 Appendix III, Security of Federal Automated Information Resources;
- Department of Justice (DOJ) Order 2640.2F, Information Technology Security;
- DOJ Order 2610.2A, Employment Security Regulations; and
- The Federal Computer Incident Response Program.

V. INFORMATION TO BE SHARED

Appendices B, C, and D contain the data elements that will be shared or will be made available to be exchanged under this MOA. Appendix B specifies the information that will be shared or available to DHS from EOIR, Appendix C specifies the information that will be shared or available to EOIR from DHS (USCIS), and Appendix D specifies the information that will be shared or available from DHS (ICE) to EOIR. Additional data exchanges and/or technical arrangements (e.g., for transferring data by new channels or protocols) that are not covered by this MOA or the current Appendices, will be referenced as new Appendices. Adding new data elements will require the written consent of the Parties.

The technical data sharing requirements, including equipment and other specifics regarding the data exchange, will be documented in Interface Control Documents (ICDs) and Interagency Security Agreements (ISAs). These documents, upon creation, shall be incorporated into this MOA as Appendices.

VI. LIMITATIONS ON THE DISCLOSURE AND USE OF INFORMATION

To the extent that information exchanged pursuant to this MOA is subject to the Privacy Act, the Parties agree to comply with the provisions of the Privacy Act including, as appropriate, disclosure to the Parties' personnel who have an official need to know and disclosures pursuant to applicable routine uses. Consistent with this MOA, each Party agrees to also comply with any applicable Civil Liberties Protection Policies. Additionally, DHS and EOIR will comply with policies that extend privacy protections to non-U.S. persons, as applicable. Both Parties acknowledge that the use and disclosure of the data and other information provided by the Parties under this MOA may also be subject to limitations under immigration and other law, including:

- the Immigration and Nationality Act, including:
 1. Certain Department of State records, INA § 222(f), 8 U.S.C. § 1202(f);
 2. Applications for Special Agricultural Workers pursuant to INA § 210(b), 8 U.S.C. § 1160(b), and implementing regulations at 8 C.F.R. § 210.2(e);
 3. Applications for Legalization pursuant to INA § 245A(c), 8 U.S.C. § 1255a(c), and implementing regulations at 8 C.F.R. § 245a.2(t);
 4. Temporary Protected Status (TPS), INA § 244(c)(6), 8 U.S.C. § 1254a(c)(6), and implementing regulations at 8 C.F.R. §§ 244.16, 1244.16;
 5. Classified information as described in INA § 219, 8 U.S.C. § 1189, and INA § 504, 8 U.S.C. § 1534;
 6. Certain information provided by an alien spouse or child in the context of a petition to remove conditions on the alien's lawful permanent resident status. INA § 216(c)(4), 8 U.S.C. § 1186a(c)(4), and implementing regulations at 8 C.F.R. §§ 216.5(e)(3)(viii), 1216.5(e)(3)(viii); and
 7. Confidential information as described in INA § 235(c)(2), 8 U.S.C. § 1225(c)(2).
- Information relating to beneficiaries of T and U nonimmigrant status for victims of severe forms of trafficking in persons or other serious criminal activity and information relating to Violence Against Women Act (VAWA) self-petitioners and battered spouses and children applying for cancellation of removal. 8 U.S.C. § 1367;
- Names and identifying information of trafficking victims and their family members for trafficking victims in federal custody. 22 U.S.C. § 7105(c)(1); 28 C.F.R. § 1100.31(d)(2);
- Maintenance of accuracy and integrity of entry and exit data system. 8 U.S.C. § 1365b(f);
- Information contained in or pertaining to any application for asylum (including for withholding of removal under INA § 241(b)(3), 8 U.S.C. § 1231(b)(3), or withholding or deferral of removal under the Convention Against Torture), or records pertaining to any credible fear or reasonable fear determinations. 8 C.F.R. §§ 208.1(a)(1), 1208.1(a)(1), 208.6, and 1208.6. As a matter of policy, information contained in or pertaining to any application for refugee status; and

- Other limitations, and the terms and conditions set forth in relevant systems of records notices.

Each Party will provide or make available data to the other as permitted under the Privacy Act, and as documented in the ICDs and ISAs as provided for in Section V of this MOA. Each Party is responsible for ensuring the appropriate use of this data. The information obtained under this MOA and incorporated into the receiving Party's systems of records as designated in the Appendices may be used only (1) for authorized purposes as stated in Section II of this MOA, (2) consistent with any properly authorized law enforcement responsibilities of DHS, subject to the provisions of the MOA, or (3) as otherwise authorized by law or executive order; and will be used in a manner consistent with any statutory or regulatory requirements.

The Parties agree that subject to the limitations and exceptions in 8 U.S.C. § 1367, and related Departmental confidentiality policies, neither DHS nor EOIR is precluded from disclosing information obtained pursuant to this MOA within each Party's respective Department and sub-components. Information protected under 8 U.S.C. § 1367 may only be disclosed to detailees from outside of the Departments of Homeland Security, Justice, or State, or contractors upon mutual agreement of DHS and EOIR.

The Parties agree that neither DHS nor EOIR may disclose information obtained pursuant to this MOA to other organizations or entities, except to the extent consistent with the authorized uses of the information described above and in accordance with the Privacy Act or any applicable DHS or EOIR SORN.

VII. RESPONSIBILITIES

- A. DATA.** The Parties will adhere to the technical standards, business processes, and privacy protection mechanisms required under the Privacy Act, relevant Privacy Impact Assessments, and applicable privacy and security policies that are related to the sharing of U.S. Government data maintained in a Privacy Act System of Records.
- B. USE.** The information made available in accordance with this MOA will be accessed only for authorized purposes as stated in this MOA. To the extent that a Party may base significant decisions in any individual case on this data, that Party shall take all appropriate measures to understand and properly interpret such data. The Parties shall not use each other's data for reporting on the other's receipts, completions, or pending caseload unless the Party seeking to disclose such information first seeks and receives written approval from the other Party. Requests for EOIR caseload data shall be made directly to EOIR's Office of Planning, Analysis, and Technology. In addition, DHS agrees not to remove aliens based on electronic receipt under this MOA of EOIR's decision in a case, and agrees instead to forestall such action until DHS receives the decision in the manner in which it otherwise would receive it as a Party to the immigration proceedings.
- C. TECHNOLOGY.** The Parties are committed, based on the availability of resources, to updating the information technologies employed to implement this MOA and to ensure

that their systems remain efficient and compatible as data volumes increase and more advanced technologies become available. The Parties agree to discuss needs, requirements and priorities annually to work toward the common purpose of improved governmental efficiency.

- D. **SUPPORT.** The Parties will assist each other through established liaisons to support inquiries on data and technical problems. The Parties will notify and update each other on a yearly basis regarding points of contact for this purpose.
- E. **PRIVACY.** The collection, use, disclosure, and retention of personally identifiable information shall be limited to that which is necessary for purposes of the Parties as set forth in this MOA. Personally identifiable information shall be protected by administrative, technical, and physical safeguards appropriate to the sensitivity of the information. Personally identifiable information will only be disclosed to authorized individuals with a need to know and only for uses that are consistent with the stated purposes under this MOA and in accordance with applicable laws.
- F. **DATA QUALITY.** All information, to include personally identifiable information shared and/or maintained under this MOA shall, to the extent feasible, be as accurate, complete, and current as necessary for the purposes identified in this MOA. The Parties shall cooperate with each other in this regard. The Parties will take prompt appropriate action with regard to any additions, changes, deletions, or corrections of personally identifiable information. In addition, each Party upon discovery of data quality errors in their respective data or the other Parties' data will promptly notify the other Party. Failure to notify a Party regarding data quality errors may result in a suspension of the MOA.
- G. **TRAINING ON DATA HANDLING.** Each Party shall ensure that its employees, contractors, and detailees from third agencies with access to shared data receive appropriate training on privacy compliance, the handling of personally identifiable information, the confidentiality of records, and civil rights and civil liberties protections, including the special confidentiality protections afforded under immigration and privacy law and policy to certain classes of aliens such as T, U, VAWA, TPS, and asylum and refugee applicants and beneficiaries.
- H. **RECORDS STORAGE AND RETENTION.** The Parties shall store all information exchanged in systems that ensure protection of the information. All information shall be retained in accordance with the Parties' own internal retention schedules. In no instance will the retention period for any data item exceed the maximum period permissible by applicable legal and regulatory requirements or official retention policies, as described in each applicable SORN. Each Party will dispose of the information accessed under this MOA in accordance with its own records retention authorities and policies, as well as applicable laws and regulations, whichever is shorter.
- I. **SECURITY.** To prevent the unauthorized disclosure, copying, use, or modification of information provided under this MOA, the Parties agree to restrict access to such information on a need to know basis and to use recognized security mechanisms such as

passwords, encryption, or other reasonable safeguards to prevent unauthorized access. The Parties shall comply with their internal Department and agency security policies as well as any higher level requirements and reconcile any contradictory internal security policies so as to allow for appropriate and secure operations. The Parties' security program managers shall review this MOA to ensure that it is implemented in a manner that addresses all relevant security concerns. The ISAs associated with this MOA should be consulted for additional security considerations. The Parties will retain control over access to their data and can suspend such access for failure to resolve breaches or suspected breaches of the restrictions detailed in the ISAs.

- J. **INFORMATION INCIDENTS AND/OR UNAUTHORIZED ACTIVITY.** In the event of an information incident or unauthorized activity affecting data shared under this MOA, the Party discovering the information incident or unauthorized activity will immediately report to and consult with the other Party. The Parties will provide notice, written unless otherwise specified, of any unauthorized activity or information incidents. An information incident is defined as: (a) The loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users, have access or potential access to Personally Identifiable Information (PII) in usable form, whether physical or electronic, or where authorized users access PII for an unauthorized purpose. The term encompasses both confirmed and suspected incidents involving PII which raise a reasonable risk of harm; and/or (b) any violation of any of the terms of this MOA. Unauthorized activity may encompass access, use, dissemination, storage or disposal of the data covered by this MOA. Such notice is to be provided to the Point of Contact listed in this MOA immediately after the Party first learns of the information incident or unauthorized activity. The Parties agree to cooperate with any Party's investigation or auditing of such information incidents and measures taken in response to same. The Parties shall also take other action as required in regard to unauthorized activity or information incidents in compliance with applicable laws and regulations.

VIII. POINTS OF CONTACT

For DHS: Deputy Assistant Secretary, Office of Policy, Screening Coordination

For EOIR: Assistant Director, Office of Planning, Analysis, and Technology

IX. INTERPRETATION AND SEVERABILITY

Nothing in this MOA is intended to conflict with current law or regulation. If a term of this MOA is inconsistent with such authority, then that term shall be invalid to the extent of the inconsistency, but the remaining terms and conditions of this MOA shall remain in full force and effect.

X. NO PRIVATE RIGHT OR CAUSE OF ACTION

This MOA is an agreement between DHS and EOIR. It does not create or confer any right or benefit, of any kind, either substantive or procedural, that may be enforceable by any third party against the Parties, the United States, or the officers, employees, agents, or associated personnel thereof. Nothing in this MOA is intended to restrict the authority of either Party to act as provided by law, statute, or regulation, or to restrict any Party from administering or enforcing any laws within its authority or jurisdiction.

XI. FUNDING

This MOA is not an obligation or commitment of funds, nor does it serve as a basis for transfer of funds. Unless otherwise agreed to in writing, each Party shall bear its own costs in relation to this MOA. Expenditures by each Party will be subject to its budgetary processes and to the availability of funds and resources pursuant to applicable appropriations, laws, regulations, and policies. The Parties expressly acknowledge that this in no way implies that Congress will appropriate funds for such expenditures.

XII. DISPUTE RESOLUTION

Disagreements between the Parties arising under or related to this MOA shall be resolved only by consultation between the Parties.

XIII. EFFECTIVE DATE


The terms of this MOA will become effective upon date of the last signature of the Parties.

XIV. PERIODIC REVIEW, MODIFICATION, SUSPENSION, AND TERMINATION

The Parties shall designate responsible officials to meet at least annually, or sooner upon the request of either Party, to discuss and review the implementation, modification, periodic validation, or amendment of this MOA and its appendices. The results of such discussions or reviews shall be exchanged between the Parties with the DHS Officer for Civil Rights and Civil Liberties and the DHS Chief Privacy Officer receiving information on behalf of DHS and the EOIR Senior Component Official for Privacy receiving information on behalf of EOIR. However, failure of the Parties to comply with this meeting requirement will not result in the termination of the MOA. Modification or amendment of this MOA shall be upon mutual, written consent of the Parties. Either party may suspend the MOA for failure to resolve breaches of security requirements described in section VII, I (above) or for failures to resolve questions involving data quality described in section VII, F (above), until either the breach or failure is resolved to the satisfaction of the suspending Party. Any proposed changes to the MOA shall first be reviewed by the Parties and shall require execution of an addendum or a new MOA. Unless terminated by either Party upon thirty (30) days written notice to the other, this MOA shall remain in full force and effect. Notwithstanding termination of this MOA, and unless otherwise agreed through mutual written consent of the Parties in accordance with existing privacy requirements, all provisions regarding the protection of records, including data privacy and confidentiality, shall remain in effect as long as either Party retains possession of any such records or data obtained from the other Party through this MOA.

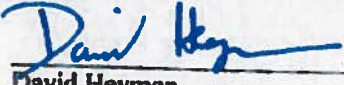
The foregoing represents the agreement reached by the U.S. Department of Homeland Security and the U.S. Department of Justice, Executive Office for Immigration Review.

SIGNED:



Juan P. Osuna
Director
Executive Office for Immigration Review

10-22-12
Date



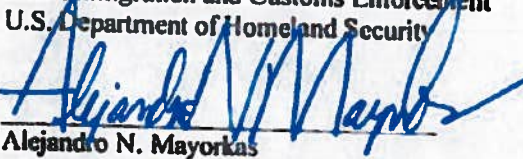
David Heyman
Assistant Secretary
Directorate of Policy
U.S. Department of Homeland Security

15-OCT-2012
Date



John Morton
Director
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

OCT 2
Date



Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security

October 15, 2012
Date