

MEMORANDUM OF UNDERSTANDING

BETWEEN

U.S. DEPARTMENT OF JUSTICE

CIVIL RIGHTS DIVISION

AND

THE U.S. DEPARTMENT OF HOMELAND SECURITY

U.S. CITIZENSHIP AND IMMIGRATION SERVICES

REGARDING

INFORMATION SHARING AND CASE REFERRALS

I. PURPOSE

The Civil Rights Division of the U.S. Department of Justice (DOJ), represented by the Immigrant and Employee Rights Section (IER), and the U.S. Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), represented by the Fraud Detection and National Security Directorate (FDNS), are entering into this Memorandum of Understanding (MOU) regarding information sharing and case referrals.

The purpose of this MOU is to establish a framework for FDNS and IER to efficiently manage and maintain information sharing and interagency case referrals with respect to:

- A. An employer's potential misuse of the employment-based immigrant and/or non-immigrant visa programs to discriminate against available and qualified U.S. workers in violation of applicable laws and regulations; and
- B. An employer's potential violation of the statutes and regulations governing the processes for seeking employment-based immigrant and/or non-immigrant visas.

II. PARTIES

The parties to this MOU are IER, on behalf of DOJ's Civil Rights Division, and FDNS, on behalf of USCIS (together the "Parties").

A. Civil Rights Division, Immigrant and Employee Rights Section

- 1. The DOJ's Civil Rights Division prosecutes violations of civil rights statutes and enforces federal statutes and executive orders that prohibit, among other

things, unlawful discrimination in voting, education, employment, housing, police services, public accommodations and facilities, and federally funded and conducted programs.

2. IER is responsible for enforcing the anti-discrimination provision of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b, which prohibits covered persons or entities from discriminating on the basis of citizenship status or national origin: (1) in hiring, firing, or recruitment/referral for a fee; and (2) in connection with their documentary practices in the employment eligibility verification process. In addition, the INA's anti-discrimination provision prohibits covered persons or entities from engaging in retaliation and/or intimidation against any person for engaging in protected activity under 8 U.S.C. § 1324b.
3. Injured parties or their authorized representatives may file charges with IER alleging a violation of 8 U.S.C. § 1324b within 180 days of the alleged discrimination. In addition, IER is authorized by statute to initiate independent investigations in the absence of a charge if there is reason to believe that unlawful discrimination has occurred.

B. Fraud Detection and National Security Directorate, U.S. Citizenship and Immigration Services

1. FDNS leads USCIS' efforts to determine whether individuals or organizations filing for immigration benefits pose a threat to national security, public safety, or the integrity of the nation's legal immigration system.
2. FDNS program administration is mandated by the INA and delineated by delegations of authority. The delegations provide authority to USCIS, *inter alia*, to conduct investigations of potential civil and criminal violations of immigration laws, fingerprinting and registering aliens, maintaining files and record systems, and taking and considering evidence. The applicable delegations of authority are found primarily at Homeland Security Delegation No. 0150.1, section II, paragraphs (H), (I), (J), (N), (S), and (BB).

III. AUTHORITIES

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

- A. INA, 8 United States Code (U.S.C.) §§ 1101, 1103, 1153-1155, 1184, 1188, 1324a, and 1324b.
- B. Homeland Security Act of 2002, as amended, codified at 6 U.S.C. § 101, et seq., (Pub. L. No. 107-296).
- C. Privacy Act of 1974, as amended, codified at 5 U.S.C. § 552a.
- D. 8 Code of Federal Regulations (C.F.R.) §§ 204.5, 214.2, and 274a.2.

- E. 28 C.F.R. §§ 0.53, 44, and 68.
- F. Homeland Security Delegation No. 0150.1, paragraphs (H), (I), (J), (N), (S), and (BB).
- G. Executive Order No. 13,788, April 21, 2017 (82 Fed. Reg. 18837).
- H. DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, November 21, 2013 (78 Fed. Reg. 69864).
- I. DHS/USCIS-006 Fraud Detection and National Security Records, August 8, 2012 (77 Fed. Reg. 47411).
- J. Central Civil Rights Division Index File and Associated Records, August 3, 2003 (68 Fed. Reg. 47610).
- K. Civil Rights Interactive Case Management System, August 3, 2003 (68 Fed. Reg. 47610).

IV. RESPONSIBILITIES AND OBLIGATIONS

The Parties have agreed to the performance of the following responsibilities:

A. Data Exchange

This MOU will provide for the exchange of data between the Parties as follows:

1. USCIS data to be shared with IER:
 - i. Data that may allow IER to identify potential misuse of the employment-based immigrant and non-immigrant visa programs to discriminate against available and qualified U.S. workers in favor of employment-based visa workers in violation of 8 U.S.C. § 1324b. Consistent with the terms and scope of this MOU, FDNS and IER will collaborate to identify the types of information that FDNS has that may be relevant to IER's investigations and to establish a protocol for sharing each type of information consistent with the Privacy Act, 5 U.S.C. § 552a(b)(3) and 5 U.S.C. § 552a(b)(7), their respective missions, needs, and resources.
 - a. Within 45 days of the final execution of this MOU, the Parties will identify the type of information maintained by USCIS that may be useful to IER in furtherance of its statutory functions and that may be lawfully disclosed to IER, and they will cooperate to identify, memorialize, and exchange an initial list of the specific data elements to be shared regarding employers. Specific data elements to be shared include, but are not limited to, employer name, employer address, and type of immigration benefit associated with the employer.

- b. FDNS will provide the agreed upon data elements on a monthly basis and on a recurring monthly date agreed upon by the Parties. In the event that after FDNS has undertaken a search for data meeting the agreed-upon specifications and FDNS has no data to provide under this paragraph, FDNS will indicate so on a monthly basis.
 - ii. Data that IER requests in connection with an alleged violation of 8 U.S.C. § 1324b in accordance with 5 U.S.C. § 552a(b)(3) and 5 U.S.C. § 552a(b)(7) of the Privacy Act and the terms and conditions of this MOU. IER's Deputy Special Counsel or designee will request such information in a written request for law enforcement assistance that references this MOU and otherwise satisfies the standards set forth in 5 U.S.C. § 552a(b)(3) and 5 U.S.C. § 552a(b)(7). IER will provide FDNS the list of individual(s) who are permitted to make a written request for law enforcement assistance under this provision.
2. IER data to be shared with USCIS:
- i. Employer information that may allow FDNS to identify potential violations of statutes and regulations governing employment-based immigrant and non-immigrant visa programs. Consistent with the terms and scope of this MOU, FDNS and IER will collaborate to identify the types of information that IER has that may be relevant to FDNS's employer-related investigations and to establish a protocol for sharing each type of information consistent with their respective missions, needs, and resources.
 - a. Within 45 days of the final execution of this MOU, the Parties will identify and agree on the types of information IER will share with FDNS, and they will cooperate to identify, memorialize, and exchange an initial list of the specific data elements to be shared. Specific data elements to be shared include, but are not limited to, employer name, employer address, and the immigration benefit type associated with the employer.
 - b. IER will provide the agreed upon data elements on a monthly basis and on a recurring monthly date agreed upon by the Parties. In the event that after IER has undertaken a search for data meeting the agreed-upon specifications and IER has no data to provide under this paragraph, IER will indicate so on a monthly basis.
 - ii. Data that FDNS requests in connection with an investigation into possible employer violation of immigration law in accordance with 5 U.S.C. § 552a(b)(3) and 5 U.S.C. § 552a(b)(7) of the Privacy Act and the terms and conditions of this MOU. FDNS's Associate Director or designee will request such information in a written request for law enforcement assistance that references this MOU and otherwise satisfies the standards set forth in 5 U.S.C. § 552a(b)(3) and 5 U.S.C. § 552a(b)(7). FDNS will

provide IER the list of individual(s) who are permitted to make a written request for law enforcement assistance under this provision.

B. Case Specific Referrals

1. Referral of Cases by FDNS:

- i. If FDNS becomes aware of information relating to suspected employer violations of the statutes and regulations that IER enforces governing the potential misuse of employment-based immigrant and non-immigrant visa programs to discriminate against available and qualified U.S. workers in favor of employment-based visa workers, FDNS will promptly refer that information to IER when FDNS's policies and procedures do not require otherwise. A referral from FDNS to IER will include a copy of the complaint, when available, or a written description of the allegations that might violate 8 U.S.C. § 1324b, along with any other documentation that may describe or relate to the alleged illegal conduct. In making a referral, FDNS will use, to the extent practical, the IER Referral Form, available on the "Partnerships" page on IER's website, <https://www.justice.gov/crt/partnerships> and attached to this Memorandum as Attachment 1.
- ii. If FDNS encounters potential victims of discrimination under 8 U.S.C. § 1324b, FDNS will promptly provide them with information about IER's hotline, which is (800) 255-7688 or (800) 237-2515 (TTY for hearing impaired), a copy of IER's charge form, and/or information on how to access IER's charge form, available at <https://www.justice.gov/crt/filing-charge>.

2. Referral of Cases by IER:

- i. If IER becomes aware of information relating to suspected employer violations of statutes and regulations governing employment-based immigrant and non-immigrant visa programs that USCIS enforces, IER will promptly share that information with FDNS by sending an email to [REDACTED] and/or encourage the individual(s) with such information to promptly contact FDNS by email at ReportFraudTips@uscis.dhs.gov.
- ii. A referral of a written charge or complaint from IER to FDNS will include a written description of the allegations that might indicate a violation of immigration laws, along with any other relevant documents and/or an index of the information IER collected that may describe or relate to the alleged illegal conduct. To the extent that specific information is required to conduct a search within USCIS systems, IER will provide the full name of the individual employer or corporate entity, names of principal owners and shareholders, business addresses, Employer Identification Numbers, DBA (Doing Business As), and, if applicable, the employer's petition

information.

C. Implementation

1. To carry out its responsibilities under this MOU, FDNS will:
 - i. Share data with IER pursuant to Section IV.A.1.
 - ii. Refer cases to IER pursuant to Section IV.B.1.
 - iii. Commit personnel and resources sufficient to support this MOU to the extent practicable.
 - iv. Notify IER if information IER provided under Section IV.A.2.i results in FDNS initiating an investigation into possible employer violation of immigration law.
 - v. Submit a request to the IER POC that references this MOU if the request is made under Section IV.A.2.ii or seeks additional information in connection with an investigative file IER has referred to FDNS.
2. To carry out its responsibilities under the MOU, IER will:
 - i. Share data with FDNS pursuant to Section IV.A.2.
 - ii. Refer cases to FDNS pursuant to Section IV.B.2.
 - iii. Submit a request to the FDNS POC that references this MOU, if IER makes the request pursuant to Section IV.A.1.ii and seeks from FDNS information relevant to an open IER investigation or seeks additional information relating to a complaint or investigative file FDNS has referred to IER.
 - iv. Notify FDNS if information FDNS provides under Section IV.A.1.i results in IER initiating an investigation into possible discrimination against U.S. workers.
 - v. Commit personnel and resources sufficient to support this MOU to the extent practicable.

D. Points of Contact

1. The IER POC for purposes of overseeing the implementation of this MOU is the Special Counsel, the Deputy Special Counsel, a designee, or a successor. For purposes of facilitating regular information-sharing exchanges, IER Special Litigation Counsel are the POCs to make, receive, and respond to requests.
2. The FDNS POC for purposes of overseeing the implementation of this MOU is the Associate Director for FDNS, a designee, or a successor. For purposes of facilitating regular information-sharing exchanges, FDNS will designate

FDNS Fraud Division staff who will work with IER staff in initiating, receiving, and responding to requests.

3. All requests and documents exchanged between the Parties under this MOU will occur only through the POCs identified above, their designees, or successors. Each Party will provide the other with a list of individual(s) within their respective agencies who are the POCs permitted to make, receive, and respond to requests for information, including law enforcement requests under Section IV.A.1.ii and Section IV.A.2.ii, and each Party shall update its list to reflect changes as needed.

E. Safeguards, Disclosure of Information and Record Retention

1. All information exchanged between the Parties under this MOU will be in accordance with applicable laws, regulations, and policies, including, but not limited to, information-security guidelines of the sending Party with respect to any information that is deemed personally identifiable information (PII). Such PII includes, but is not limited to, the employee or applicant's name, Social Security number, alien number, date of birth, or other information that may be used to identify the individual. The Parties' obligations to exchange information under this MOU, including, but not limited to, referrals under Sections IV.B., are subject to all exclusions and/or limitations imposed by existing confidentiality agreements or protections and/or other MOUs.
2. To the extent that information exchanged pursuant to this MOU is subject to the Privacy Act, 5 U.S.C. Section 552a, the Parties agree to comply with all provisions of the Privacy Act, including, as appropriate, disclosure to the Parties' personnel who have an official need to know and only for uses that are consistent with the stated purposes under this MOU and in accordance with applicable laws and disclosures pursuant to applicable routine uses. The collection, use, disclosure, and retention of PII shall be limited to that which is necessary for purposes of the Parties, as set forth in this MOU. PII shall be protected by administrative, technical, and physical safeguards appropriate to the sensitivity of the information in conformance with the Privacy Act and the Fair Information Practice Principles (FIPPs).
3. In accordance with DHS and DOJ standards, the Parties agree to maintain physical, electronic, and procedural safeguards to appropriately protect the information shared under this MOU against loss, theft, or misuse; unauthorized access; and improper disclosure, copying, use, modification, or deletion.
4. In general, the information to be provided by USCIS and IER is considered Sensitive But Unclassified (SBU) in nature. It is the intent of the Parties that the exchange of data shall be conducted at the unclassified level and For Official Use Only (FOUO).
5. All personally identifiable and other SBU information or Controlled

Unclassified Information (CUI) that one Party shares with another Party under this MOU shall be encrypted when sent electronically or accessed through a secure connection, or when placed on portable media (e.g., thumb drives, compact discs, or laptops).

6. Both Parties acknowledge that the data and other information to be provided by USCIS under this MOU may be subject to the Illegal Immigration Reform and Immigrant Responsibility Act, Section 404(h); the Immigration Reform and Control Act, Section 121(c); 8 C.F.R. Section 208.6 (Disclosure of Asylum Information to Third Parties, which also applies to refugee information, as a matter of DHS policy); 8 U.S.C. Section 1367 (Disclosure of information pertaining to certain victim-based applications or petitions); Legalization, 8 U.S.C. 1255a(c); Temporary Protected Status, 8 U.S.C. 1254(c)(6); and other immigration-specific limitations, and the terms and conditions set forth in USCIS' System of Records Notices.
7. FDNS and IER agree that, prior to any disclosure to third parties of information obtained pursuant to this MOU, written consent will be obtained from the originating Party for that information. If, in a court proceeding, either Party receives a request or order to produce information that includes information originating from the other Party, the receiving Party will notify the originating Party of the request so that any objection to the disclosure may be interposed.
8. Each Party shall maintain data covered under this MOU in accordance with its own National Archives and Records Administration (NARA)-approved records control schedules, or, if applicable, NARA's General Records Schedules. Each Party will, in coordination with the other Party, provide appropriate notice to the public regarding the existence and contents of this Agreement, including through the creation and, as appropriate, release to the public of Privacy Impact Assessments.

F. Reporting Security Breaches and Disclosures of Personal Information

1. To further safeguard the privacy, security, confidentiality, integrity, and availability of the connected systems and the information they store, process, and transmit, the Parties agree to notify each other, immediately, through their POCs, by phone and email, of any potential breach in security, especially those that result in unauthorized access, use, or disclosure of any personal information or other data shared under this MOU.
2. Contact information will be updated, as required, through written notification to the other Parties. Breach responses will be conducted pursuant to OMB M-17-12, Preparing for and Responding to the Breach of Personally Identifiable Information (January 3, 2017), and by the Parties' breach policies and breach response plans.

G. Training

1. Reciprocal training is required to familiarize each agency with the other's jurisdiction and to help staff recognize what constitutes violations of the laws enforced by USCIS and IER. Initial training shall occur before commencing information sharing under this MOU, except for interagency requests for information independently authorized under the Privacy Act. The Parties will cooperate to accomplish this training as expeditiously as possible. Accordingly, the Parties agree that:
 - i. FDNS will provide training and related materials to IER, and IER will provide training and related materials to FDNS. Training will occur on an ongoing basis, as necessary to facilitate referrals under this MOU.
 - ii. At the Parties' discretion, training also may be accomplished by detailing an employee of either agency to the other agency for a period of time consistent with training and resource needs.
2. All persons who receive access to data pursuant to this MOU shall be appropriately trained, annually, on the proper privacy and security treatment of PII in accordance with existing privacy and security policies of the Parties.

V. OTHER PROVISIONS

- A. This MOU does not create an obligation or commitment of funds, nor is it a basis for the transfer of funds. This MOU is a basic statement of the understanding between the Parties of the tasks and methods for performing the tasks described in this MOU. Expenditures by each Party will be subject to its budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies. The Parties expressly acknowledge that the existence of this MOU in no way implies that Congress will appropriate funds for such expenditures.
- B. If the referring Party has retained jurisdiction over any aspect of a matter at the time of referral to the other Party, both Parties, in their discretion, will coordinate their activities to the greatest extent practical and share information so as to minimize duplication of effort and any risk that a Party's activities may adversely affect the other.
- C. Nothing in this MOU is intended to conflict with existing laws, regulations, or other guidance binding on USCIS and/or IER. If a term of this MOU is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this MOU shall remain in full force and effect. If a Party identifies any such inconsistency, it shall bring it to the attention of the other Party in order to modify the MOU as may be necessary.
- D. This MOU is not intended to create any rights, privileges, or benefits, substantive or procedural, enforceable by any individual or organization against the United States, its departments, agencies, or other entities, its officers or employees, or

any other person.

VI. EFFECTIVE DATE

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

VII. MODIFICATION

This MOU may only be modified or amended by the mutual written consent of the Parties. The specific terms of other operative documents between the Parties pursuant to this MOU can be individually negotiated and modified without requiring a modification to the terms of this MOU, unless the terms or scope of information and activities contemplated in any such operative document is inconsistent with the purposes, terms, and scope of this MOU, in which case, the MOU itself would require a modification or an amendment, or else it will be modified or amended.

VIII. REVIEW

The Parties agree to review the MOU within one (1) year of the effective date to determine whether any modifications are necessary to more effectively accomplish the goals of the MOU. Failure to conduct a review, however, will not result in the termination of this MOU.

IX. TERMINATION

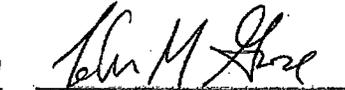
This MOU will remain in effect unless terminated by either Party upon thirty (30) days written notice to the other Party. However, all provisions regarding the protection of records remain in effect as long as either Party remains in possession of any records or any information derived from the other Party.



L. Francis Cissna
Director
U.S. Citizenship and Immigration
Services
U.S. Department of Homeland Security

4/26/19

Date



John M. Gore
Acting Assistant Attorney General
Civil Rights Division
U.S. Department of Justice

5/11/18

Date