MEMORANDUM OF UNDERSTANDING

between

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
HOMELAND SECURITY INVESTIGATIONS

and

Birmingham Police Department

regarding

THE DESIGNATION OF Birmingham Police Department **EMPLOYEES**
AS CUSTOMS OFFICERS (EXCEPTED)

1. **PARTIES.** The Parties to this Memorandum of Understanding (MOU) are U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) and Birmingham Police Department

2. **AUTHORITY.** Title 19, United States Code (U.S.C.), Section 1401(i); 19 U.S.C. § 1589a. This MOU is also authorized under the provisions of Birmingham Police Department.

3. **PURPOSE.** The Parties agree that effective enforcement of the laws relating to HSI jurisdiction requires close cooperation and coordination between the two Parties. The Parties have therefore entered into this MOU to govern the use of HSI designations by certain employees of Birmingham Police Department

Pursuant to section 401(i), Tariff Act of 1930, as amended (19 U.S.C. § 1401(i)), the Secretary of Homeland Security is authorized to designate persons as Customs Officers (Excepted) to perform the duties of a Customs Officer. Within ICE, this authority has been delegated to the HSI Special Agents in Charge. Pursuant to 19 U.S.C. § 1589a, customs officers are authorized to enforce the full range of federal offenses. However, in designating Customs Officers (Excepted), *HSI is not conveying the authority to enforce administrative violations of immigration law.*

There may be instances when HSI determines that it is desirable for certain sworn law enforcement employees of Birmingham Police Department to perform certain HSI duties. This MOU sets forth the agreement and relationship between the Parties with respect to this determination.

4. **RESPONSIBILITIES.**

The Parties agree as follows:

HSI agrees to:

a. Designate certain employees of Birmingham Police Department as Customs Officers (Excepted), without additional compensation, to perform the duties as noted on the "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001). This form is attached and is hereby made part of this MOU;

b. Issue a "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001) to each qualified and designated employee;

c. Provide appropriate training in laws, policies, and procedures to each designated employee;

d. Advise the designated Customs Officers (Excepted) about court proceedings concerning seizures or arrests made by them in accordance with the authorities granted by HSI contemplated under this MOU; and

e. Process, under appropriate regulations, any injury claim submitted as a result of injuries occurring to the designated Customs Officers (Excepted) while such individuals are acting pursuant to this MOU, for compensation under the Federal Employee Workers Compensation Act (5 U.S.C. § 8101, *et seq.*).

Birmingham Police Depart agrees:

a. That only sworn law enforcement officers of Birmingham Police Department who successfully complete the appropriate HSI Task Force Officer cross-designation Training Course and receive an approved "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001) will be designated as Customs Officers (Excepted);

b. That each law enforcement officer will be bound by the Authorities Granted and the Endorsements and Restrictions as noted on the "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001);

c. To advise HSI of each court proceeding in which the validity of a Customs Officer (Excepted)'s enforcement authority becomes an issue, and allow HSI to provide legal memoranda or other assistance as deemed necessary by HSI;

d. That agency employees designated as Customs Officers (Excepted) will follow HSI directives and instructions when utilizing enforcement authority conveyed by HSI;

e. To provide to HSI, before designation of each officer and on an ongoing basis, any derogatory information, or information that may call into question the officer's truthfulness or ability to testify in court; and

f. To return all HSI-issued equipment and identification when a cross-designated officer terminates employment or when his or her cross-designation expires.

Both Parties agree:

a. That any abuse of HSI cross-designation authority may lead to the revocation of such cross-designations by HSI; and

b. To schedule periodic meetings to review this MOU, as required.

5. **REPORTING AND DOCUMENTATION.** HSI SAC offices will maintain the original signed "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001). Copies of this form will be held by the Contraband Smuggling Unit at HSI Headquarters, the designated Customs Officer (Excepted), and Birmingham Police Department

If applicable, the HSI office will maintain documentation of designated Customs Officers (Excepted) approved to use HSI vehicles and certification that the designated Customs Officers (Excepted) have completed the ICE Fleet Card Training in Virtual University and any other fleet related training.

6. **POINTS OF CONTACT.**

HSI Office: HSI Atlanta
Name: Susan Swihart
Title: TFO Coordinator
Address: 107 Frankfurt Circle
Birmingham, AL 35211
Telephone Number: +1 (205) 266-1240
Fax Number: +1 (205) 917-8623
E-mail Address: Susan.C.Swihart@ice.dhs.gov

Birmingham Police Depart :
Name: Patrick D. Smith
Title: Chief of Police
Address: 1710 1st Avenue North
Birmingham, AL 35203
Telephone Number: +1 (205) 254-1700
Fax Number:
E-mail Address: Patrick.Smith@birminghamal.g

7. **OTHER PROVISIONS.** This MOU is an internal agreement between the Parties and does not confer any rights, privileges, or benefits to any other party or the public.

Nothing in this MOU is intended to conflict with current laws, regulations, or policies of either Party. If a term of this MOU is inconsistent with such authority, that term shall be invalid but the remaining terms and conditions of this MOU shall remain in full force and effect.

Nothing in this MOU is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1519.

The forms and authorities referenced herein may be renamed or replaced by HSI without prejudice to this MOU.

8. **EFFECTIVE DATE.** The terms of this MOU will become effective on the date the last Party signs the MOU. The Designation Form of each Customs Officer (Excepted) is effective per the date on that document.

9. **MODIFICATION.** This MOU may be amended by the written concurrence of both Parties.

10. **TERMINATION.** This MOU may be terminated by either Party upon a 30-day written notification to the other Party.

APPROVED BY:

Katrina W. Berger
Name of HSI Official

Special Agent in Charge
Title of HSI Official
Homeland Security Investigations
U.S. Immigration and Customs Enforcement

Date: _____

Patrick D. Smith
Name of Birmingham 's Official

_____
Title of Chief 's Official
Name of Birmingham 's Agency

Date: _____

Attest

_____
City Clerk

APPROVED AS TO FORM BY LAW DEPARTMENT:

18 October 2021
Assistant City Attorney / Date

EXPIRATION DATE:
Expires no later than 2 years from certification date (#10)

HSI Credential Number:
Badge Number: (if applicable)

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

DESIGNATION, CUSTOMS OFFICER (EXCEPTED) – TITLE 19 TASK FORCE OFFICER

(Homeland Security Investigations Directive 14-02)

Pursuant to the provisions of 19 U.S.C. § 1401(i) and as delegated, and by agreement with your employing agency, ***you are hereby designated a Customs Officer (Excepted) without additional compensation, hereinafter referred to as a Title 19 Task Force Officer (TFO)***. This designation, for the performance of such duties as outlined below, will be in effect while you remain in your present position and location until the expiration date, unless revoked at an earlier date. In performing the duties of a TFO, you will be subject to guidelines, directives, and instructions of the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI). Arrangements will be made for you to receive the training necessary to perform your duties as a TFO according to HSI Directive 14-02, "Law Enforcement Officers Designated to Act as Customs Officers (Excepted) for Investigative Purposes – Domestic", dated May 7, 2014, or as updated.

Duration of Designation: Designations under this Directive are valid for a period of 2 years from the date the TFO Course was completed. Title 19 TFOs may be redesignated for an additional 2 years, without additional training, upon the completion of a new Designation Form, ICE Form 73-001 (this form). Redesignation must be accomplished before the expiration of the original designation. Title 19 TFOs must attend the TFO Course no less than every 4 years to remain designated.

1. TFO's Full Legal Name:	2. Last 4 of Social Security Number:	3. Date of Birth:
4. Parent Agency (Full Name – NO ACRONYMS):	4a. Phone Number:	4b. Parent Agency E-mail:
Address Street City State Zip Code	4c. ICE or DHS E-mail (Required for Full and Part-time TFOs):	
	5. Parent Agency Position/Rank:	6. Parent Agency Badge Number:
7. Parent Agency Supervisor:	7a. Phone:	7b. E-mail:
8. HSI Designated Supervisor:	8a. Phone:	8b. E-mail:
9. HSI Office Assigned:	10. Certification/Recertification Date (Certification expires 2 years from): (Date of training completion or date recertified by the SAC for an additional 2 years prior to expiration of first 2 years.)	
11. Cancellation/Revoked Date:	Cancellation Authorizing Signature (HSI): (Expires 2 years from date above (#10), if no signature present)	

12. TFO Status:

- [x] **Full-Time**: A TFO who is co-located with HSI and is working directly for an HSI first- or second-line supervisor for a minimum of 30 hours per week and is significantly contributing to investigations. *(ICE or DHS e-mail required)*
- [ ] **Part-Time**: A TFO who is co-located with HSI and is working directly for an HSI first- or second-line supervisor for a minimum of 8 hours per week and is significantly contributing to investigations. *(ICE or DHS e-mail required)*
- [ ] **On-Call:** A TFO who does not meet the standards of either a Part-Time or Full-Time TFO, who is occasionally called upon to assist HSI, including officers working strictly in a uniformed capacity, who does not report directly to HSI. *(ICE or DHS e-mail recommended; required to fly armed.)*

13. Authorities Granted:

Only the marked duties are authorized for the TFO.

- [x] Carry a firearm, in accordance with federal law, that he or she is authorized and qualified to carry by his or her parent agency while on duty.
- [x] Execute and serve orders, search warrants, arrest warrants, subpoenas, summonses, and other processes issued under the authority of the United States, in accordance with laws administered and/or enforced by HSI.
- [x] Make arrests without warrant for any offense against the United States committed in his or her presence or for a felony, cognizable under the laws of the United States, committed outside his or her presence for which sufficient probable cause exists.
- [x] Perform other law enforcement duties which may be authorized under 19 U.S.C. § 1589a.
- [x] Make seizures of property in compliance with the Constitution of the United States and the Customs laws.
- [x] Conduct customs border searches for merchandise being imported into or exported from the United States, and detain such persons or articles necessary to that end, or as otherwise may be subject to seizure under the laws of the United States.
- [ ] Other authorities: _____

14. Endorsements and Restrictions:

The following marked endorsements and restrictions apply to the TFO:

- [x] **This designation form is INVALID without accompanying HSI identification and employing agency identification.**
- [x] The TFO shall follow the Interim ICE Use of Force Policy, dated July 7, 2004, or as updated or superseded.
- [x] The TFO is not granted the authority to enforce administrative violations of immigration law.
- [x] The TFO will present for inventory his or her HSI-issued credentials (and badge, if applicable) every 6 months or upon request of the HSI supervisor.
- [x] Prior to using the authorities granted by this designation, notification will be made to an HSI supervisor or designee. (This restriction is *mandatory for On-Call TFOs*, and is otherwise discretionary.)
- [x] The TFO is authorized to fly armed while conducting official HSI business. (ICE or DHS e-mail required.)
- [x] The TFO is authorized to operate a government owned vehicle (GOV) in accordance with HSI policy.
- [x] Other Endorsements and Restrictions: Permitted to utilize parent issued BWC per Directive 21-04

***Refer to HSI Directive 14-02, "Law Enforcement Officers Designated to Act as Customs Officers (Excepted) for Investigative Purposes - Domestic," dated May 7, 2014, or as updated, for a complete explanation of authorities, endorsements, and restrictions.**

15. TFO's Acknowledgement:	16. Authorizing Officer (HSI SAC):
I have read and understand the authorities granted to me and the endorsements and restrictions listed above and in the referenced Directive.	Katrina W. Berger Printed Name Special Agent in Charge Title
Task Force Officer's Signature Date	x Signature Date

PRIVACY ACT STATEMENT

AUTHORITY: Information about you, as a Task Force Officer (TFO) Customs Officer, is collected and maintained pursuant to the provisions of 19 U.S.C. § 1401(i), appropriate re-delegations, and by agreement with your employing agency. Through the Title 19 program, HSI enters into agreements with federal, state and local law enforcement agencies to delegate to the agencies' Law Enforcement Officers (LEOs) the authority to enforce certain federal laws. As a result, HSI is authorized to delegate the full range of law enforcement duties of a Customs Officer to LEOs in federal, state and local law enforcement agencies.

PRINCIPAL PURPOSE(S): Your information is collected on this form to acknowledge your selection and designation as a Customs Officer.

ROUTINE USE(S): Pursuant to the routine uses published in DHS/ALL-023 Department of Homeland Security Personnel Security Management System of Records (February 23, 2010 75 FR 8088), HSI may share your information with federal, state, local, tribal, foreign, or international agencies if the information is relevant and necessary to HSI's decision to delegate authority or issue a security clearance to you.

DISCLOSURE: The disclosure of information on this form is voluntary; however, failure to provide the information requested will disqualify you from further participation in the Title 19 Program.