

June 2, 2021

Austin R. Evers
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005

Re: CBP-2020-010996, et. al.

Dear Mr. Evers:

This is a final response to multiple FOIA requests under request numbers CBP-2020-010996, CBP-2020-011000, and CBP2020-011002. You requested: (1) final policies, procedures, protocols, instructions, or guidance concerning the transfer of responsibility for credible fear interviews from asylum officers within USCIS to law enforcement agents within CBP; (2) any materials used to train border patrol agents to conduct credible fear interviews, including but not limited to lessons, PowerPoint presentations, guides, handbooks, hand-outs, and manuals; and (3) records sufficient to identify the frequency of each category of determination in credible fear interviews conducted by border patrol agents.

CBP FOIA has reviewed 47 pages of records for this release. CBP FOIA has made the following determination.

- 15 pages Non-Responsive to the request.
- 15 pages released in full or partially redacted pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(C), and (b)(7)(E).
- 15 pages of records that are withheld in full pursuant to Title 5 U.S.C. § 552 (b)(5).
- Two pages that have been referred to USCIS for processing.

CBP FOIA further received 189 pages of referred records from USCIS and made the following determinations:

- 188 pages not responsive to the request.
- One page that is a duplicate of pages CBP is producing.

Additional information regarding the applicable exemptions and response can be found at the following link: <https://www.cbp.gov/document/guidance/exemption-definitions>. Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

As this matter is currently in litigation, if you need further assistance or would like to discuss any aspect of this response, please contact Joseph Carilli, Assistant United States Attorney.

Sincerely,

Patrick Howard

Patrick Howard
Branch Chief
U.S. Customs and Border Protection, FOIA Division
Privacy and Diversity Office
Enclosure(s)

U.S. DEPARTMENT OF HOMELAND SECURITY U.S. Customs and Border Protection DELEGATION ORDER CUSTOMS DIRECTIVE	ORDER NUMBER 19-007
	ISSUE DATE July 8, 2019
	EFFECTIVE DATE July 8, 2019
SUBJECT Delegation to the Chief of United States Border Patrol Regarding Credible Fear Determinations	
DELEGATED BY Commissioner	DELEGATED TO Chief, U.S. Border Patrol
SOURCE OF AUTHORITY BEING DELEGATED Homeland Security Act of 2002, 116 Stat. 2135, Pub. L. 107-296, as amended; Section 235(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(1)(B); 8 C.F.R. § 2.1; Part IV of DHS Delegation 0150.1 (authorizing the Director or highest ranking official of USCIS to redelegate authority to the Commissioner of CBP, with his consent); DHS Delegation 2019-001 (Delegating the Commissioner of U.S. Customs and Border Protection the authority to conduct credible fear interviews)	SUPERSEDED ORDER(S) (ORDER NUMBER(S) AND DATES(S) ONLY)
DELEGATION This delegation vests authority in the Chief of the United States Border Patrol to make credible fear determinations under section 235(b)(1)(B) of the Immigration and Nationality Act (8 U.S.C. § 1225(b)(1)(B)). By virtue of the authority vested in me as the Commissioner of U.S. Customs and Border Protection, and to the extent permitted by law, I hereby delegate to the Chief of the U.S. Border Patrol authority to make credible fear determinations under section 235(b)(1)(B) of the Immigration and Nationality Act (8 U.S.C. § 1225(b)(1)(B)). This delegation is subject to the terms of a separate Memorandum of Agreement (the Credible Fear MOA) between myself and the highest ranking official of U.S. Citizenship and Immigration Services (USCIS). The above delegation of authority may be exercised by the Chief of the U.S. Border Patrol, and may be re-delegated to appropriate Supervisory Border Patrol Agents and Border Patrol Agents assigned to the Credible Fear for USBP Pilot Program who have completed appropriate training developed by USCIS Refugee, Asylum and International Operations pursuant to INA § 235(b)(1)(B).  Mark A. Morgan Acting Commissioner	

**MEMORANDUM OF AGREEMENT BETWEEN
U.S. CUSTOMS AND BORDER PROTECTION (CBP)
AND
U.S. CITIZENSHIP & IMMIGRATION SERVICES (USCIS)**

1. **PARTIES.** The parties to this Agreement are U.S. Customs and Border Protection (CBP) and U.S. Citizenship & Immigration Services (USCIS).
2. **AUTHORITY.** This Agreement is entered into by USCIS and CBP pursuant to Part IV of Department of Homeland Security Delegation 0150.1 (June 5, 2003), as set forth in Department of Homeland Security Delegation 2019-001, "Delegation to the Commissioner of U.S. Customs and Border Protection Regarding Credible Fear Determinations."
3. **PURPOSE.** The purpose of this Memorandum of Agreement (MOA) is to set forth terms under which USCIS and CBP can foster collaboration through a Task Force (TF) assignment for the purposes of training and hearing credible fear (CF) claims and making determinations through the interview process. This pilot program is named "Credible Fear for USBP."

Under this agreement, USCIS will benefit by being able to adjudicate the backlog of asylum cases. Overall, this partnership will increase efficiency and effectiveness for DHS.

4. **RESPONSIBILITIES.** The following section details both USCIS and CBP responsibilities for the duration of this MOA.
 - A. USCIS shall:
 - i. Assign contacts at Asylum Headquarters, including other designees, to coordinate Credible Fear for USBP.
 - ii. Pay to CBP the actual costs of Border Patrol Agents (BPAs) and Supervisory Border Patrol Agents (SBPAs) performing credible fear interviews and work related to those interviews.
 - iii. Provide BPAs and SBPAs with work assignments, laptop computers, and other reasonable equipment to complete assigned tasks.
 - iv. Assign, in coordination with CBP, the weekly schedules of the designated BPAs and SBPAs for their pilot program responsibilities. USCIS will coordinate the BPA and SBPA schedules for required CBP trainings and qualifications as necessary.
 - v. Coordinate any physical or electronic access requirements and appropriate information technology support.
 - vi. Upon request, provide feedback to CBP regarding the BPAs' and

- SBPAs' performance within 30 days before the end of the pilot program. USCIS may request that CBP reassign BPAs and SBPAs who are not performing at an acceptable level of competence.
- vii. Fund all related travel for DHS/CBP pilot program responsibilities.
 - viii. Consult with CBP with respect to any assignment of FEPA overtime, i.e., regularly scheduled overtime in advance of the workweek, as necessary and in accordance with regulatory requirements for the period of time BPAs and SBPAs are performing work for USCIS. It is possible, but not expected, that BPAs and SBPAs will work more than their current BPAPRA schedule. USCIS shall fund all approved FEPA overtime for time spent performing credible fear interviews and work related to those interviews. No USCIS funds will be spent to fund any activities not directly related to credible fear interviews.
 - ix. Schedule BPAs for tours of duty consistent with their elected BPAPRA Levels and rates of pay, and comply with all provisions of BPAPRA regarding regularly-scheduled overtime and substitution of hours for absences during obligated overtime hours.
 - x. Consult with CBP with respect to any BPAPRA compensatory time being accrued by individual agents in performance of their TF duties, i.e., irregular overtime at the end of the BPA's or SBPA's shift. It is possible, but not expected, that BPAs and SBPAs will work more than their current BPAPRA schedule.

B. CBP shall:

- i. Identify up to 50 additional BPAs and SBPAs (60 total) to participate in CF for USBP training.
- ii. Process time and attendance records for personnel designated to participate in the TF assignment under this MOA.
- iii. Return the BPAs and SBPAs to their permanent CBP positions of record upon expiration of the TF assignment.
- iv. Ensure that BPAs and SBPAs are not exercising their law enforcement officer duties while on the TF assignment.
- v. CBP will activate the USCIS laptop on the CBP system.
- vi. Upon notice from USCIS, reassign BPAs or SBPAs who are not performing credible fear interviews at an acceptable level of competence.

C. Designated SBPAs and BPAs during this TF assignment shall:

- i. Receive CF for USBP training, conducted by USCIS, to satisfy the statutory definition of "asylum officer";
- ii. Use USCIS-contracted telephonic services for conducting interviews, and maintain records of use of telephonic interpreters;

- iii. Conduct non-adversarial CF interviews, eliciting all relevant and useful information related to the applicant's claimed fear of return to his/her home country;
- iv. Take notes that accurately reflect the applicant's testimony;
- v. Prepare a summary of the material facts stated by the applicant and review that summary with the applicant, providing the applicant with the opportunity to correct any errors;
- vi. Detect and report possible victims of trafficking;
- vii. Be prepared to work their BPAPRA schedules and any necessary additional hours, including the possibility of overtime on regular days off in various locations, as needed;
- viii. Document each CF determination in conformance with the applicable statutes, regulations, policies and USCIS procedures;
- ix. Update the USCIS case management system with appropriate findings;
- x. Coordinate with the designated USCIS Supervisory Asylum Officers (SAOs) on assignments for review and completion of all Asylum Officer (AO)-related CF work;
- xi. Handle time-sensitive tasks;
- xii. Maintain applicant confidentiality;
- xiii. Conduct all relevant security checks;
- xiv. Wear business attire (non-uniform) when conducting in-person CF interviews, depending upon the office;
- xv. Attend meetings and trainings as required by the USCIS field office;
- xvi. Prepare required documents to ensure legally sufficient determinations;
- xvii. Maintain USCIS equipment according to USCIS protocols;
- xviii. Take necessary steps to return USCIS equipment to USCIS when the equipment is no longer needed for completion of CF cases;
- xix. Maintain non-adversarial liaison with nongovernmental organizations and/or private sector stakeholders; and
- xx. Perform other duties as assigned by USCIS/Asylum Division, with the prior written approval of CBP.

5. POINTS OF CONTACT.

A. CBP/United States Border Patrol

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

Acting Associate Chief

U.S. Border Patrol HQ

Operational Requirements Management Division

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

Washington, DC 20229

Phone: (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)@cbp.dhs.gov

B. USCIS

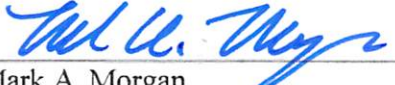
(b) (6)
Chief
Asylum Division
US Citizenship and Immigration Services
(b) (6)
Washington, DC 20529
Phone: (b) (6)
(b) (6)@uscis.dhs.gov

6. **OTHER PROVISIONS.** Nothing in this Agreement is intended to conflict with current law or regulation or the directives of the DHS. If a term of this agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect. This agreement is based on the availability of funds.
7. **EFFECTIVE DATE.** This agreement is effective upon signature by both Parties. The terms of this agreement shall apply to all cooperative activities between CBP and USCIS to facilitate the processing of credible fear claims under this MOA and any prior assignments of CBP personnel for these purposes shall be considered to be covered under the terms of this MOA, including but not limited to, any credible fear determinations made by a CBP officer prior to the date of the agreement.
8. **DURATION.** This MOA will remain in effect until the end of the pilot program or until terminated by the Parties. This agreement must be renewed through a signed extension after 180 days from the effective date. This agreement can be extended indefinitely in 180 day increments, or less thereafter.
9. **FUNDING.** This MOA does not obligate funds or create a financial obligation between the Parties. No provision of this MOA shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable law. All activities contemplated by this MOA are subject to availability of funds and other necessary resources to the Parties. An Interagency Agreement will be established between USCIS and CBP to obligate funds related to this MOA.
10. **MODIFICATION.** This agreement may be modified upon the written consent of both parties. This agreement may be reviewed at the request of either party to determine if any changes or amendments will be made or incorporated. Such changes

or amendments shall be signed by the original signatories of the agreement, their representatives, or their successors.

11. **TERMINATION.** Either party wishing to terminate this agreement may do so upon 30 days written notice.

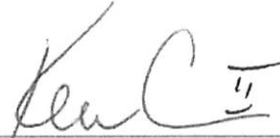
12. **APPROVALS.**



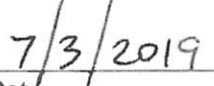
Mark A. Morgan
Acting Commissioner
U.S. Customs and Border Protection
Department of Homeland Security



Date



Ken Cuccinelli II
Acting Director,
U.S. Citizenship & Immigration
Services
Department of Homeland Security



Date

U.S. DEPARTMENT OF HOMELAND SECURITY U.S. Customs and Border Protection DELEGATION ORDER CUSTOMS DIRECTIVE	ORDER NUMBER 19-007
	ISSUE DATE July 5, 2019
	EFFECTIVE DATE July 5, 2019
SUBJECT Delegation to the Chief of United States Border Patrol Regarding Credible Fear Determinations	
DELEGATED BY Commissioner	DELEGATED TO Chief, U.S. Border Patrol
SOURCE OF AUTHORITY BEING DELEGATED Homeland Security Act of 2002, 116 Stat. 2135, Pub. L. 107-296, as amended; Section 235(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(1)(B); 8 C.F.R. § 2.1; Part IV of DHS Delegation 0150.1 (authorizing the Director or highest ranking official of USCIS to redelegate authority to the Commissioner of CBP, with his consent); DHS Delegation 2019-001 (Delegating the Commissioner of U.S. Customs and Border Protection the authority to conduct credible fear interviews)	SUPERSEDED ORDER(S) (ORDER NUMBER(S) AND DATES(S) ONLY)
DELEGATION This delegation vests authority in the Chief of the United States Border Patrol to make credible fear determinations under section 235(b)(1)(B) of the Immigration and Nationality Act (8 U.S.C. § 1225(b)(1)(B)). By virtue of the authority vested in me as the Commissioner of U.S. Customs and Border Protection, and to the extent permitted by law, I hereby delegate to the Chief of the U.S. Border Patrol authority to make credible fear determinations under section 235(b)(1)(B) of the Immigration and Nationality Act (8 U.S.C. § 1225(b)(1)(B)). This delegation is subject to the terms of a separate Memorandum of Agreement (the Credible Fear MOA) between myself and the highest ranking official of U.S. Citizenship and Immigration Services (USCIS). The above delegation of authority may be exercised by the Chief of the U.S. Border Patrol, and may be re-delegated to appropriate Supervisory Border Patrol Agents and Border Patrol Agents assigned to the Credible Fear for USBP Pilot Program who have completed appropriate training developed by USCIS Refugee, Asylum and International Operations pursuant to INA § 235(b)(1)(B). (b) (6), (b) (7)(C) John P. Sanders Chief Operating Officer and Senior Official Performing the Functions and Duties of the Commissioner	

MEMORANDUM TO FILE



**U.S. Customs and
Border Protection**

OCT 10 2019

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

FROM: Carla L. Provost
Chief
U.S. Border Patrol

SUBJECT: Ratification of Credible Fear Interviews

This memorandum is to ratify Credible Fear (CF) interviews conducted prior to the delegation of authority from U.S. Citizenship and Immigration Services (USCIS) to U.S. Customs and Border Protection (CBP).

On April 29, 2019, President Donald Trump issued a *Memorandum on Additional Measures to Enhance Border Security and Restore Integrity to Our Immigration System*. In that memorandum, the Department of Homeland Security was ordered to “reprioritize the assignment of immigration officers and any other employees of the Department as the Secretary deems necessary and appropriate to improve the integrity of adjudications of credible and reasonable fear claims.”

U.S. Border Patrol (USBP) and USCIS established a Task Force program, where Border Patrol Agents (BPAs) would be trained to conduct CF interviews and would thereafter conduct CF interviews. USCIS agreed to provide the necessary training pursuant to INA § 235(b) (1) (B) and to delegate authority to USBP to carry out this initiative. In lieu of their BPA duties, USBP participants would conduct CF interviews under the supervision of supervisory USCIS asylum officers.

As of June 24, 2019, participants in the Task Force had completed approximately 120 CF interviews. However, these interviews were conducted prior to the formalization of a Memorandum of Agreement (MOA) between CBP and USCIS, and prior to the appropriate delegations of authority. The delegation from USCIS to CBP was executed on June 25, 2019 (Delegation Number 2019-001); the delegation from the CBP Commissioner to the USBP Chief was executed on July 8, 2019 (Delegation Order 19-007); and the MOA between CBP and USCIS was executed on July 10, 2019.

Although all BPAs on the Task Force conducting credible fear interviews had successfully completed the necessary asylum officer training, prior to the June 25, 2019 and July 8, 2019 delegations, USBP did not have the delegated authority to conduct CF interviews. However, authority has now been delegated and USCIS concurs with CBP ratifying its previously conducted interviews; therefore, self-ratification is appropriate and legally permissible. *See State Nat’l Bank of Big Spring v. Lew*, 197 F.Supp.3d 177, 182-84 (D.C. Cir. 2016).

For these reasons, all CF interviews completed by USBP as of June 24, 2019, prior to the delegation of authority by USCIS, are hereby ratified. No corrective action is necessary.

**MEMORANDUM OF AGREEMENT BETWEEN
U.S. CUSTOMS AND BORDER PROTECTION (CBP)
AND
U.S. CITIZENSHIP & IMMIGRATION SERVICES (USCIS)**

1. **PARTIES.** The parties to this Memorandum of Agreement (MOA) are U.S. Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS).
2. **AUTHORITY.** This MOA is entered into by USCIS and CBP pursuant to Part IV of Department of Homeland Security Delegation 0150.1 (June 5, 2003), as set forth in Department of Homeland Security Delegation 2019-001, "Delegation to the Commissioner of U.S. Customs and Border Protection Regarding Credible Fear Determinations."
3. **PURPOSE.** The purpose of this MOA is to set forth terms under which USCIS and CBP can foster collaboration through a Task Force (TF) assignment for the purposes of training and hearing credible fear (CF) claims and making determinations through the interview process. This pilot program is named "Credible Fear for CBP."

This partnership will increase efficiency and effectiveness for DHS.

4. **RESPONSIBILITIES.** The following section details both USCIS and CBP responsibilities for the duration of this MOA.
 - A. USCIS shall:
 - i. Assign Points of Contact (POCs) at Asylum Headquarters (HQ) to coordinate Credible Fear for CBP, including POCs within the USCIS Office of the Chief Financial Officer, Office of Information and Technology (OIT) and Office of Chief Counsel (OCC).
 - ii. Fund payroll and all CF-related travel for DHS/CBP pilot program responsibilities. *See* Appendices A and B for funding procedures.
 - iii. Assign, in coordination with CBP, the weekly schedules of the designated U.S. Border Patrol (USBP) agents and Office of Field Operations (OFO) officers for their pilot program responsibilities.
 - iv. Coordinate the agents' and officers' schedules for required CBP trainings and qualifications as necessary.
 - v. Ensure the TF member conducting the credible fear interview was not involved in the apprehension or encounter of the alien(s) being interviewed.
 - vi. Notify CBP promptly if agents or officers are exercising law enforcement officer or customs officer duties while on the TF assignment.
 - vii. Upon request, provide feedback to CBP regarding the agents' and officers' performance within 30 days of the end of the TF assignment.
 - viii. Inform CBP of requests to reassign agents or officers who are not performing at an acceptable level of competence.
 - ix. Provide agents and officers with reasonable equipment to complete assigned tasks including, but not limited to, computers and/or laptops, printers, portable hotspots, and scanners.
 - x. Ensure agents and officers can access USCIS applications required for credible fear.

- xi. Coordinate and provide electronic access via modifications to USCIS applications (b) (7)(E) etc.) and provisioning of CBP accounts through (b) (7)(E).
- xii. Provide network connectivity when agents or officers are at USCIS sites.
- xiii. Assist with the resolution of any pending CBP TF incident tickets.
- xiv. Transfer laptops to CBP. Once transferred, CBP is the property custodian of the devices for the duration of the MOA.
- xv. Maintain a log of laptops transferred to CBP for the duration of the MOA.

B. CBP shall:

- i. Assign POCs at USBP Headquarters and OFO Headquarters to coordinate Credible Fear for CBP, including POCs within Finance, OIT and OCC.
- ii. Identify agents and officers from both USBP and OFO to participate in CF for CBP training.
- iii. Process time and attendance records for personnel designated to participate in the TF assignment under this MOA.
- iv. Return the agents and officers to their permanent CBP positions of record upon expiration of the TF assignment.
- v. Ensure that CBP is not assigning agents and officer's law enforcement officer or customs officer duties while on the TF assignment.
- vi. Upon notice from USCIS, reassign agents and officers who are not performing credible fear interviews at an acceptable level of competence.
- vii. Ensure agents and officers assigned to the TF do not perform CF work for a TF assignment longer than 180 days.
- viii. Activate laptops on the CBP system.
- ix. Ship replacement laptops to agents and officers when laptops malfunction.
- x. Designate POCs responsible for imaging laptops provided by USCIS.
- xi. Image laptops.
- xii. Assign USCIS transferred laptops to officers and agents prior to USCIS training.
- xiii. Designate POCs to provide IT support at home stations.
- xiv. Provide in-person and remote support, especially when administrator rights are required.
- xv. Provide connectivity at CBP sites where credible fear cases are processed.
- xvi. Provide CBP help desk support when officers or agents call with IT problems.
- xvii. Take necessary steps to remove access to all accounts, applications and systems required for CF processing.

C. Designated agents and officers during this TF assignment shall:

- i. Receive CF for CBP training, conducted by USCIS, to satisfy the statutory definition of "asylum officer."
- ii. Use USCIS-contracted telephonic services for conducting interviews, and maintain records of use of telephonic interpreters using the electronic log provided by USCIS.
- iii. Promptly report to USCIS if the TF member conducting the credible fear interview recalls, or discovers in their course of USCIS duties, any involvement in the apprehension or encounter of the alien(s) being interviewed, and immediately cease the interview.

- iv. Conduct non-adversarial CF interviews, eliciting all relevant and useful information related to the applicant's claimed fear of return to his/her home country.
- v. Take notes that accurately reflect the applicant's testimony.
- vi. Prepare a summary of the material facts stated by the applicant and review that summary with the applicant, providing the applicant with the opportunity to correct any errors.
- vii. Detect and report possible victims of trafficking.
- viii. Process each CF determination in conformance with the applicable statutes, regulations, policies and USCIS procedures.
- ix. Handle time-sensitive tasks.
- x. Maintain applicant confidentiality.
- xi. Conduct all relevant security checks.
- xii. Attend meetings and trainings as required by USCIS.
- xiii. Maintain USCIS equipment according to USCIS protocols.
- xiv. Maintain non-adversarial liaison with nongovernmental organizations and private sector stakeholders.
- xv. Coordinate with the designated USCIS Supervisory Asylum Officers (SAOs) on assignments for review and completion of all Asylum Officer (AO) related CF work.
- xvi. Wear business attire (non-uniform) and adhere to the local USCIS policy on dress code when conducting in-person CF interviews.
- xvii. Adhere to the professional dress standards set by the USCIS office assigned when working from home sector/station.
- xviii. Perform other duties as assigned by USCIS/Asylum Division, with the prior written approval of CBP.
- xix. Be prepared to work their regular assigned schedules and any necessary additional hours, including the possibility of overtime on regular days off in various locations as needed, in accordance with applicable approval requirements and pay statutes.
- xx. Store notes, summaries, and all other documentation in accordance with Asylum Division policies and procedures.
- xxi. Update the USCIS case management system with appropriate findings.
- xxii. Prepare required documents to ensure legally sufficient determinations.
- xxiii. Take necessary steps to return USCIS equipment, including laptops, to USCIS when the equipment is no longer needed, at the end of the agent's or officer's assignment to the TF, or at the end of the pilot, whichever occurs first.

5. POINTS OF CONTACT

A. CBP/United States Border Patrol
 (b) (6), (b) (7)(C)
 Acting Associate Chief
 U.S. Border Patrol HQ
 Operational Requirements Management Division
 (b) (6), (b) (7)(C)
 Washington, DC 20229
 (b) (6), (b) (7)(C)

B. USCIS

(b) (6)

Chief

Asylum Division

US Citizenship and Immigration Services

(b) (6)

Washington, DC 20529

(b) (6)

C. CBP/OFO

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

Director

Enforcement Programs Division

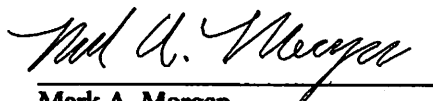
(b) (6), (b) (7)(C)

Washington, DC 20229

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

6. **OTHER PROVISIONS.** Nothing in this MOA is intended to conflict with current law or regulation or the directives of DHS. If a term of this agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect. This agreement is based on the availability of funds.
7. **EFFECTIVE DATE.** This MOA is effective upon signature by both Parties. The terms of this agreement shall apply to all cooperative activities between CBP and USCIS to facilitate the processing of credible fear claims under this MOA, and any prior assignments of CBP personnel for these purposes shall be considered to be covered under the terms of this MOA, including but not limited to, any credible fear determinations made by a CBP agent or officer prior to the date of the agreement.
8. **DURATION.** This MOA will remain in effect for 180 days or until terminated by the Parties, whichever is sooner. This MOA may be renewed through a signed extension in additional increments not to exceed 180 days each.
9. **FUNDING.** This MOA does not obligate funds or create a financial obligation between the Parties. No provision of this MOA shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable law. All activities contemplated by this MOA are subject to availability of funds and other necessary resources to the Parties. An Interagency Agreement will be established between USCIS and CBP to obligate funds related to this MOA.
10. **MODIFICATION.** This MOA may be modified upon the written consent of both parties. This agreement may be reviewed at the request of either party to determine if any changes or amendments will be made or incorporated. Such changes or amendments shall be signed by the original signatories of the agreement, their representatives, or their successors.
11. **TERMINATION.** Either party wishing to terminate this agreement may do so upon 30 days written notice.

12. **APPROVALS.**



Mark A. Morgan
Acting Commissioner
U.S. Customs and Border
Protection
Department of Homeland Security

JAN 30 2020

Date

(b) (6)

Mark Koumans
Deputy Director
U.S. Citizenship & Immigration
Services
Department of Homeland Security

JAN 27 2020

Date

Appendix A: U.S. Border Patrol

The following information is intended to clarify the responsibilities of USCIS and USBP as they relate to this pilot.

USCIS shall:

1. Consult with CBP with respect to any assignment of Federal Employee Pay Act (FEPA) overtime, i.e., regularly scheduled overtime in advance of the workweek, as necessary and in accordance with regulatory requirements for the period of time Border Patrol Agents (BPAs) and Supervisory Border Patrol Agents (SBPAs) are performing work for USCIS. It is possible, but not expected, that BPAs and SBPAs will work additional hours, including the possibility of overtime on regular days off in various locations, in excess of their current Border Patrol Agent Pay Reform Act of 2014 (BPAPRA) schedules. USCIS shall fund all approved FEPA overtime for time spent performing credible fear interviews and work related to those interviews. No USCIS funds will be spent to fund any activities not directly related to credible fear interviews.
2. Schedule BPAs for tours of duty consistent with their elected BPAPRA Levels and rates of pay, and comply with all provisions of BPAPRA regarding regularly-scheduled overtime and substitution of hours for absences during obligated overtime hours.
3. Consult with CBP with respect to any BPAPRA compensatory time being accrued by individual agents in performance of their TF duties, i.e., irregular overtime at the end of the BPA's or SBPA's shift.
4. Establish an Inter/Intra-Agency Reimbursable Work Agreement (IRWA) with USBP to address the reimbursement of costs identified in Section A of FS Form 7600, to include USBP payroll costs, travel costs, and overtime. This responsibility is assigned to the Office of the Chief Financial Officer.

USBP shall:

1. Provide to USCIS time and attendance records identifying all BPAs assigned to the TF working in support of this MOA and supporting details to identify actual payroll and overtime costs.
2. Create all required travel documents (authorizations and vouchers) for payment of travel costs pursuant to DHS and CBP Travel Policy and the Federal Travel Regulations.
3. Submit quarterly reports of actual expenditures paid for the USBP agents to support this TF and bill USCIS for these expenses under a signed IRWA to recover actual travel costs. The current IRWA extends funding for USBP until end of Fiscal Year 2020.

Appendix B: Office of Field Operations

The following information is intended to clarify the responsibilities of USCIS and OFO as they relate to this pilot.

USCIS shall:

1. Consult with CBP with respect to any assignment of Customs Officer Pay Reform Act (COPRA), Federal Employee Pay Act (FEPA), and Fair Labor Standards Act (FLSA) overtime. USCIS shall fund all overtime for time spent performing credible fear interviews and work related to those interviews. No USCIS funds will be spent to fund any activities not directly related to credible fear interviews.
2. Establish an Inter/Intra-Agency Reimbursable Work Agreement (IRWA) with OFO to address the reimbursement of costs identified in Section A of FS Form 7600 to include OFO payroll costs, travel costs, and overtime. This responsibility is assigned to the Office of the Chief Financial Officer.
3. Give one pay period's notice to CBP prior to making any changes in Task Force assignment locations, to afford the opportunity for discussion and consideration of any operational concerns, including compliance with the National Collective Bargaining Agreement between CBP and the National Treasury Employees Union, when applicable.

OFO shall:

1. Provide to USCIS time and attendance records identifying all OFO officers assigned to the TF working in support of this MOA and supporting details to identify actual payroll and overtime costs.
2. Track overtime of OFO officers to ensure compliance with mandatory OT caps.
3. Create all required travel documents (authorizations and vouchers) for payment of travel costs pursuant to DHS and CBP Travel Policy and the Federal Travel Regulations.
4. Submit quarterly reports of actual expenditures paid for the OFO officers to support this TF and bill USCIS for these expenses under a supporting IRWA to recover actual travel costs.