

MEMORANDUM OF UNDERSTANDING BETWEEN UNITED STATES  
IMMIGRATION AND CUSTOMS ENFORCEMENT, OFFICE OF DETENTION AND  
REMOVAL OPERATIONS, AND THE PUERTO RICO DEPARTMENT OF  
CORRECTIONS AND REHABILITATION, REGARDING THE RAPID  
REPATRIATION OF REMOVABLE CUSTODIAL ALIENS FROM THE UNITED  
STATES TO THEIR HOME COUNTRIES

1. PARTIES. The parties to this Memorandum of Understanding (MOU) are U.S. Immigration and Customs Enforcement (ICE), as represented by the Office of Detention and Removal Operations (DRO), and the Puerto Rico Department of Corrections and Rehabilitation (PRDCR).
2. AUTHORITY. Section 241(a) of the Immigration and Nationality Act (INA), also codified at 8 U.S.C. § 1231(a), as amended by the Homeland Security Act of 2002, Public Law No. 107-296 as codified at 6 U.S.C. § 131-134, authorizes the Secretary of the Department of Homeland Security, acting through the Assistant Secretary of ICE, to enter into written agreements with a State or any Political Subdivision of a State to remove an alien in the custody of that State. This MOU constitutes such a written agreement.
3. PURPOSE. The purpose of this MOU is to set forth terms by which ICE and PRDCR will cooperate in a Rapid Removal of Eligible Parolees Accepted for Transfer (Rapid REPAT) program, which allows for early conditional release for deportation of removable custodial aliens.
4. RESPONSIBILITIES:
  - a. PRDCR undertakes the following responsibilities:
    - 1) PRDCR will initiate the Rapid REPAT process by identifying eligible custodial aliens confined pursuant to a final conviction for a nonviolent offense as defined in section 241(a)(4)(B)(ii) of the INA, 8 U.S.C. § 1231(a)(4)(B)(i), and determining that the removal is appropriate and in the best interest of the Commonwealth of Puerto Rico. PRDCR must submit a written request to ICE for removal of such aliens. A final conviction is "a

formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld where a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed." Section 101(a)(48)(A) of the ACT, 8 U.S.C. § 1101(a)(48)(A) (codified pursuant to section 322(a)(1) of IIRIRA, Division C of Pub. L. No. 104-208, 110 Stat. 3009-628 (effective April 1, 1997)). The Board of Immigration Appeals has held that "prior judicial and administrative interpretations that required a conviction under the ACT to be "final" through exhaustion or waiver of direct appeal rights were superseded when IIRIRA expressly defined a "conviction" under the Act" *In Re McKenzie*, Board of Immigration Appeals (Jan. 29, 2008).

- 2) PRDCR will only identify a custodial alien as eligible for Rapid REPAT if the alien has exhausted, or has freely and voluntarily waived, all administrative and judicial appellate rights in writing, and if the alien agrees in writing to fully cooperate with ICE to obtain valid travel documentation and facilitate removal. See INA § 243(a)(1), 8 U.S.C. § 1253(a)(1). PRDCR will provide ICE these written documents.
- 3) PRDCR will coordinate with ICE to schedule a release date for the alien to be transferred to ICE upon acceptance into the Rapid REPAT program, receipt of appropriate documentation. ICE will not accept transfer of custody of any alien, unless a valid travel document has been obtained and a reservation for foreign departure has been confirmed.
- 4) PRDCR will maintain exclusive control and responsibility for the custody and transportation of aliens from any ICE detention facility in Puerto Rico to any PRDCR prison facility during the Rapid REPAT process where removal is not reasonably foreseeable.

5) PRDCR will transfer custody of aliens under the Rapid REPAT program only after they have been medically cleared for travel, and have received all personal belongings. Aliens will be dressed in civilian clothing for direct transport to the airport.

6) PRDCR will provide written notice and obtain acknowledgment in writing that notice was given to aliens identified as eligible for Rapid REPAT that illegal re-entry into the United States requires return of such aliens to PRDCR to finish out the remainder of their sentences and such aliens are also subject to prosecution pursuant to section 276 of the INA, 8 U.S.C. § 1326. The alien must waive in writing any and all rights of extradition which would challenge the alien's return to PRDCR to complete the remainder of his/her sentence.

b. ICE undertakes the following responsibilities:

1) When PRDCR identifies a custodial alien as eligible for early release pursuant to section 4(a)(1) of this MOU, ICE will evaluate the alien's administrative file and relevant databases to ascertain if there is an administratively final order of removal. If no final order exists, ICE will notify PRDCR that the alien is not currently eligible for Rapid REPAT. If the alien is subject to a final order, ICE will then determine if removal of the alien is significantly likely in the reasonably foreseeable future. If the alien's removal is not reasonably foreseeable, ICE will notify PRDCR that it will not take custody of the alien because the alien's removal from the United States is not significantly likely in the reasonably foreseeable future. If ICE determines that the alien can be removed in the reasonably foreseeable future, ICE will notify PRDCR that the alien has been tentatively accepted into the Rapid REPAT program. ICE maintains the right of refusal to accept any alien into the program.

2) ICE will assume custody of an alien for Rapid REPAT purposes, if and only if, the custodial alien has exhausted or waived all administrative and judicial

appellate rights, including any collateral rights to contest the alien's removal order.

3) ICE will maintain exclusive control and responsibility for the custody and transportation of aliens from any PRDCR prison facility to any ICE detention facility pursuant to the Rapid REPAT process.

4) Upon encountering an alien removed pursuant to this MOU who thereafter illegally reenters the United States, ICE will notify PRDCR of the reentry so that PRDCR can arrange for the alien's transportation back to PRDCR custody, pursuant to section 4(a)(4) of this MOU, to complete his/her state sentence. As noted above, such aliens are also subject to federal prosecution pursuant to section 276 of the INA, 8 U.S.C. § 1326.

5. POINTS OF CONTACT (POC). The designated POC for the DHS is Ileana Aguilar, Supervisory Deportation and Removal Officer, phone number 787-706-2322. The POCs for the PRDCR are the Legal Counsel to the Secretary of Correction, phone number 787-273-6464 Extensions 2905, 2915 and Undersecretary of Corrections, phone 787-793-2199

6. OTHER PROVISIONS.

a. Nothing in this MOU is intended to conflict with current law or regulation or the directives of the DHS or ICE or PRDCR. If a term of this MOU is inconsistent with such authority, then that particular term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect.

b. This MOU is an internal arrangement between ICE and PRDCR and does not create or confer any right or benefit on any other person or party, private or public.

c. Each Party is responsible for any expenses it incurs as a result of activities under this MOU. Notwithstanding any language contained herein, nothing in this MOU is meant to imply that Congress or the Commonwealth of Puerto

Rico will appropriate funds to conduct activities provided for under this MOU. Each party, however, agrees to bear its own costs to carry out its responsibilities under this MOU.

- d. Each Party is responsible for liability incurred by its own employees as a result of activities undertaken pursuant to the terms of this MOU. In the event either party is sued based in any part on activities undertaken pursuant to this MOU, such party is to notify the other party of the initiation of the suit as soon as practicable, but in any event, not later than 14 days after the party has notice of the filing of the lawsuit.

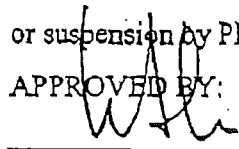
7. **EFFECTIVE DATE.** The terms of this MOU will become effective on the date on which the last of the below parties signs the MOU.

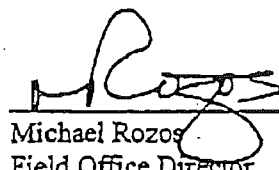
8. **MODIFICATION.** This MOU may be modified upon the mutual written consent of the parties.

9. **TERMINATION.** The terms of this MOU, will remain in effect from the date of signing until it is terminated by either party. Either party, upon written notice to the other party, may terminate the MOU at any time. A termination notice shall be delivered personally or by certified or registered mail and termination shall take effect immediately upon receipt of such notice.

Either party, upon written or oral notice to the other party, may temporarily suspend activities under this MOU when resource constraints or competing priorities necessitate. Notice of termination or suspension by ICE shall be given to PRDCR. Notice of termination or suspension by PRDCR shall be given to ICE.

APPROVED BY:

  
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Hon. Miguel A. Pereira Castillo  
Secretary of Puerto Rico Department  
of Corrections and Rehabilitation

  
\_\_\_\_\_  
Michael Rozos  
Field Office Director  
Detention and Removal Operations  
U.S. Immigration and Customs  
Enforcement

(date)

(date)

July 31, 2008