

**MEMORANDUM OF AGREEMENT
BETWEEN THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY
AND Nlets, THE
INTERNATIONAL JUSTICE & PUBLIC SAFETY NETWORK**

Objective and Scope

1. This Memorandum of Agreement (MOA) is entered into by the U.S. Department of Homeland Security (DHS) and Nlets, The International Justice and Public Safety Network (Nlets). DHS operates the Law Enforcement Information Sharing Service (LEIS Service). Nlets operates the Nlets system. The purpose of this MOA is to facilitate sharing of authorized DHS law enforcement and criminal justice information with Nlets and Nlets member law enforcement agencies to support investigations, to respond to criminal threats, to support other law enforcement activities, and to enhance public safety. Through similar arrangements entered into by Nlets and its other member law enforcement agencies, Nlets is able to ensure that information DHS contributes to Nlets is handled by the other member law enforcement agencies in a manner that is consistent with the terms of this MOA.
2. This MOA defines the information sharing relationship between DHS and Nlets and governs the ownership and use of the shared information. Nlets will ensure that information DHS exposes to Nlets members is handled in a manner that is consistent with the terms of this MOA. Under the terms of this MOA, the DHS LEIS Service will sync with the Nlets information sharing network in order to permit queries from Nlets member agencies and responses from participating DHS components.
3. The objective of this MOA is to develop a relationship between DHS and Nlets to facilitate sharing of regional law enforcement information among federal, state, and local law enforcement partners via the LEIS Service and Nlets. Through this relationship, the Parties intend to capture the cumulative knowledge of regional law enforcement agencies at all levels in a systematic and ongoing manner in order to maximize the benefits of information collection and analysis needed to respond to national or homeland security threats, criminal threats, to support law enforcement activities, and to enhance public safety and protection of the Nation's critical infrastructure.
4. The Secretary of Homeland Security has designated the Assistant Secretary for Immigration and Customs Enforcement (ICE) as the executive lead for DHS law enforcement information sharing efforts; the Assistant Secretary is thereby authorized to sign this MOA on behalf of DHS. The ICE Assistant Secretary has further delegated this authority to the Executive Director of the Law Enforcement Information Sharing Initiative.
5. This MOA only applies to information shared between the Parties pursuant to this agreement and is not intended to affect any pre-existing, independent relationships or obligations between either Party and any third Parties. Notwithstanding these pre-existing relationships, the legal requirements or other conditions placed on information shared pursuant to this agreement will continue to apply to the information when either Party shares it with third parties.

Parties and Definitions

6. The *Parties* to this MOA are DHS and Nlets.
7. *Nlets* is an international, computer-based message switching system that links all participating federal, state, local, tribal agencies with law enforcement and justice components and other specific law enforcement or justice entities for the purpose of information exchange. Nlets is a 501(c) (3) not-for-profit organization and is owned and governed by the states. Representatives from each state elect a Board of Directors and officers annually. The type of data that will be shared with Nlets is extremely diverse; however, to be shared within this process, the information must have a link to law enforcement or other criminal justice investigations or activities. At this time Canada is the only participating international member of Nlets.
8. *Member agencies* are those law enforcement agencies participating in Nlets. Additional law enforcement agencies may be added to Nlets after the execution of this MOA. If additional international or territorial law enforcement agencies join Nlets, Nlets will provide DHS with a list of those agencies before allowing such agencies access to the LEIS Service. If approved by DHS and the Nlets Governance Board, those agencies will be provided access to the LEIS Service, and will be added as participating agencies.
9. *Law enforcement agencies* that will be granted access to the LEIS Service as a result of this MOA are limited to authorized "law enforcement agencies" in the United States of America and Canada.
10. The *LEIS Service* is a standards compliant Web-accessible service operated by DHS that accepts queries from external law enforcement and criminal justice partners and provides responses from a consolidated DHS law enforcement records repository. Information owned by DHS is shared through its LEIS Service. Currently, only DHS information from ICE and Customs and Border Protection (CBP) is available for sharing; however, additional DHS law enforcement components will share information through the LEIS Service in the future.
11. *Law enforcement purpose* is defined as the investigation of alleged violations of law where DHS or Nlets member agencies have the authority to enforce or support the enforcement of the law.
12. *National or homeland security purpose* is defined as those activities undertaken to identify, prevent, interdict, deter, or disrupt threats to the United States, its people, property, or interests, including threats involving terrorist activity, the use of weapons of mass destruction, and other threats and hazards to the nation where DHS or Nlets member agencies have such authority.
13. *Subject records* are defined as records containing biographic data on persons who are or were subjects of law enforcement investigations.
14. *Authorized personnel* are supervisors, law enforcement officers, employees, detailees, agents, representatives, task force members, consultants, or contractors/subcontractors with an official need to access the information to be shared under this MOA in the performance of their official duties.

Points of Contact

15. DHS has designated the Executive Director, Law Enforcement Information Sharing Initiative to serve as the point of contact (POC) with the Nlets Governance Board.

Contact information for the Parties is provided below:

Steven W. Cooper
U.S. Immigration and Customs Enforcement
Executive Director
Law Enforcement Information Sharing Initiative
500 12th Street SW
Washington DC, 20024
Desk: (202)732-3708
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steven.w.cooper@dhs.gov

Steven E. Correll
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International Justice and Public Safety
Network
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scorrell@nlets.org

Authority

16. Authority for Nlets to enter into this MOA includes the following:

- Nlets By-Laws approved on June 27, 1985 and amended June 23, 2005
- Nlets Constitution approved on June 27, 1985 and amended June 18, 1992

17. Authority for DHS to enter into this MOA includes:

- Section 102 of the Homeland Security Act of 2002, as amended.
- Homeland Security Presidential Directive -11, Terrorist-Related Screening Procedures, dated August 27, 2004.
- 8 U.S.C. § 1105, Liaison with Internal Security Officers; Data Exchange. This section of law authorizes DHS to maintain direct and continuous liaisons with internal security officers of the federal government for the purpose of obtaining and exchanging information for use in enforcing the provisions of the Immigration and Nationality Act in the interest of the internal security of the United States.
- Section 701 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), PL 107-56 (2001 HR 3162). This section of law authorizes the establishment and operation of information sharing systems to enhance the investigation and prosecution abilities of participating law enforcement agencies.
- 8 U.S.C. § 1103(a) (4). This section of law authorizes ICE employees to perform and exercise powers, privileges, and duties relating to immigration enforcement.
- 8 U.S.C. § 1357(a). This section of law authorizes ICE employees to take specific actions in the investigation of violations of the immigration laws.
- 19 U.S.C. § 1569a. This section of law authorizes ICE employees to take specific actions to enforce the Customs laws and investigate violations thereof.
- 5 U.S.C. § 552a, Privacy Act of 1974; ICE Pattern and Analysis and Information Collection (ICEPIC) System of Records Notice, DHS/ICE-002, Aug. 18, 2008, 73 FR 48228.

- Presidential Decision Directives 39 and 62.
- Executive Order 13388, Further Strengthening the Sharing of Terrorism Information to Protect Americans, dated October 27, 2005. This Executive Order addresses access to terrorism-related information by agencies with counter-terrorism functions.
- DHS Federal Information Sharing Environment (ISE) Privacy and Civil Liberties Protection Policy, Memorandum Number: 2009-01. This policy outlines DHS's obligations as a participant in the ISE and includes limitations on the retention and collection of information protected by the First Amendment to the U.S. Constitution.
- DHS Policy Against Racial and Ethnic Profiling, June 2004 (adopting the U.S. Department of Justice Guidance Regarding the Use of Race by Federal Law Enforcement Agencies, June 2003). This policy prohibits DHS from engaging in racial or ethnic profiling in violation of this policy.

Definition of Data to be Shared by DHS

18. Through the LEIS Service, DHS shall initially share ICE and CBP subject records with Nlets member agencies and their authorized users. DHS intends to share records and information from additional DHS law enforcement components in the future. Shared records shall conform to the National Information Exchange Model (NIEM) for individual data items and to the NIEM extensible Markup Language, Information Exchange Package Documentation for the messages themselves.

Delivery of Data

19. The DHS Interconnection Security MOA provides the technical standards related to the transfer of data between DHS and Nlets as provided in this MOA. DHS will have access to Nlets via a secure Internet connection and is responsible for providing its own Internet connection and maintenance of all associated hardware and circuits.
20. In general, the Parties agree to use efficient, commercially available network technology to store and transfer data in a manner that will allow data to be transferred in real time. The Parties are committed to updating the technologies employed to implement this MOA in order to ensure maximum efficiency and effectiveness of data-sharing as data volumes increase and advances in technology occur.

Ownership, Sharing, Use and Quality of DHS Information

21. Authorized Nlets users will have access to DHS information via the LEIS Service. Nlets member agencies will provide their own connectivity and maintenance.
22. DHS will permit authorized personnel of Nlets member agencies to access and use information via the LEIS Service.
23. Each DHS component that contributes information shared via the LEIS Service retains sole ownership of, sole responsibility for, and exclusive control over the information that it contributes, and may at any time update, correct, or delete that information.

24. Each DHS component contributing information will, to the quickest degree possible, update, correct, or delete the information that is found to be incorrect within the DHS source system.
25. Each DHS component will ensure that information it makes available through the LEIS Service is information that it is authorized to share with Nlets under this MOA, and that such information was not obtained and is not maintained by DHS in violation of any applicable law. In addition, each DHS component will ensure compliance with all federal laws, regulations, policies, and procedures applicable to the information it makes available through the LEIS Service or otherwise made applicable to the information contained therein by the terms of this agreement.
26. Each DHS component will make reasonable efforts to ensure that information that it makes available through the LEIS Service is accurate, complete, timely, and relevant. If an Nlets member agency receives a challenge to or has a reasonable question about the accuracy of DHS information, then the member agency will notify the DHS point of contact listed in this MOA in writing.
27. Nlets member agencies will access and use DHS information obtained via the LEIS Service for the following purposes only: official criminal law enforcement purposes, national or homeland security purposes, and background checks on applicants seeking employment with Nlets member agencies. DHS information obtained via the LEIS Service cannot be accessed or used for any other purpose, including general licensing, employment (except as provided for in this paragraph), eligibility for federal or state benefits, and background investigations not related to employment with Nlets member agencies.
28. Nlets will protect the confidentiality of all DHS information. DHS information obtained via the LEIS Service may not be disclosed in response to a request made under any state or local access law. Information available through the LEIS Service remains in the custody and control of DHS and is subject to release only in accordance with federal law, including the Freedom of Information Act and the Privacy Act. Nlets member agencies will notify Nlets and the DHS contributing component immediately upon becoming aware of a lawsuit, freedom of information act request or other judicial proceeding seeking access to DHS information obtained via the LEIS Service, in either verbatim or derivative form. Where Nlets receives a third party request for DHS reports or information accessed through the LEIS Service, Nlets shall consult with the DHS POC listed in this MOA for a determination as to the manner in which the request will be responded to.
29. DHS information obtained via the LEIS Service, including analytical products derived there from, may not be used as a basis for enforcement action or disseminated for any other purpose or in any other manner outside the Nlets agency that accessed the information, unless that agency first obtains the express permission of the DHS contributing component. Specifically included within this prohibition is any inclusion of DHS information obtained via the LEIS Service in an official investigative or case file and any use of this information in the preparation of judicial process such as affidavits, warrants, or subpoenas. Nlets users of DHS information obtained via the LEIS Service may not print, copy, or electronically retain this information without obtaining the DHS contributing component's permission. When DHS information obtained via the LEIS Service is summarized for internal communications or otherwise documented for internal use, the

Nlets user shall indicate that the information was obtained via the LEIS Service. The date the information was accessed via the LEIS Service will also be annotated.

30. Notwithstanding the requirement in the preceding paragraph that LEIS Service information not be used as a basis for enforcement action or disseminated without first obtaining the permission of the DHS contributing component, in accordance with and to the extent permitted by applicable law, judicial process, or applicable guidelines, immediate dissemination of LEIS Service information can be made without such permission if the Nlets member agency determines that:
 - a) there is an actual or potential threat of terrorism, immediate danger of death or serious physical injury to any person, or imminent harm to the national security; and
 - b) it is necessary to disseminate such information without delay to any appropriate recipient for the purpose of preventing or responding to such a threat, danger, or harm.

Nlets member agencies shall immediately notify Nlets and DHS POC listed in this MOA upon receiving notice of any information dissemination made by a member agency under this exception.

31. Nlets member agencies will duly report in writing to the DHS POC listed in this MOA any instance in which DHS information is lost, stolen, compromised, or otherwise used in an unauthorized manner. Such notice is to be provided to DHS immediately after the party first learns of the unauthorized use.
32. Each DHS component understands that Nlets information accessed via the LEIS Service may change over time and users should verify the accuracy of information prior to taking any action based on the information.

Privacy and Security

33. Both Nlets and LEIS Service have an audit capability that will log the date, time, subject, and originating account of all user queries. The Parties will maintain these audit logs for five years or for the life of the records accessed, whichever is longer. Each Party will, upon request, cooperate with reasonable requests for information from the other party as necessary to allow the parties respective oversight authorities to ensure the proper execution and implementation of the terms of this agreement. Upon request, the Parties will also share the results of audit reports or other internal investigations related to performance under the agreement.
34. Nlets will exercise the degree of care appropriate to protecting information with respect to the information obtained through the LEIS Service and Nlets pursuant to this MOA. Nlets will restrict access to such information to authorized personnel. Unauthorized use or sharing may result in administrative or disciplinary action, and the offending party may be prosecuted or fined, when appropriate, under applicable federal or state laws. (See **Sanctions** below for greater details regarding the penalties for unauthorized use of information through the LEIS Service.) The Parties acknowledge that unauthorized disclosure of DHS information could reasonably be expected to interfere with ongoing investigations and enforcement proceedings.

35. 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 provisions of the Privacy Act of 1974, 5 U.S.C. 552a and the stated purposes under this MOA and for which the information was originally collected.

Nlets acknowledges their access to or use of information covered by this agreement must comply with any written Privacy and Civil Liberties Protection Policies applicable to the information shared by either party under this MOA including, when feasible and as otherwise required, written guidelines that ensure the protection of privacy and other legal rights of Americans in the development and use of the Information Sharing Environment (ISE).¹

Property

36. Each party is responsible for purchasing and maintaining its own equipment and facilities in relation to this MOA.
37. Unless otherwise provided herein or in an addendum, each party shall bear its own costs in relation to this MOA. Expenditures will be subject to applicable budgetary processes and availability of funds pursuant to applicable laws and regulations, including the Anti-Deficiency Act, 31 U.S.C. 1341. The Parties expressly acknowledge that this MOA in no way implies that any funds will be appropriated for such expenditures.

Liability

38. Unless specifically addressed by the terms of this MOA, the Parties acknowledge they are not responsible for wrongful acts or for acts of omission or negligence of the other Parties' officers and employees. Parties are only responsible for the negligent or wrongful acts or omissions of their respective officers and employees to the extent they would be liable under the laws of the jurisdiction(s) to which they are subject.
39. This MOA is an agreement between the Parties and is not intended to create or confer, and does not create or confer, on any other person or entity any right or benefit, substantive or procedural, enforceable at law or otherwise.

Sanctions

40. Nlets participating agencies will duly report to Nlets and DHS in writing any instance in which Nlets or the LEIS Service information is used in an unauthorized manner. Such notice is to be provided immediately after the party first learns of the unauthorized use.
41. Any participating agency, component or user who is determined by Nlets or DHS to be in systemic or repeated violation of applicable laws and procedures governing access to and use of DHS information may be denied access to Nlets and the LEIS Service.

¹ As established pursuant to section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), as amended. For the purposes of this MOA, applicable ISE guidelines are those which pertain specifically to exchange of terrorism-related information.

42. Any supervisor, law enforcement officer, employee, detailee, agent, representative, task force member, contractor/subcontractor, or consultant, who by virtue of his employment or official position, has possession of, or access to, information shared under this MOA which contain personally identifiable information, the disclosure of which is prohibited by law, agreement, rules, or regulation and who, knowing that the disclosure of the information is prohibited, willfully discloses the material in any matter, including oral communication, will have their access to the information shared under this MOA revoked, and may be prosecuted or fined, when appropriate, under applicable federal or state law, or may be subject to administrative or disciplinary actions.

Entry into Force, Duration, Amendment, and Termination

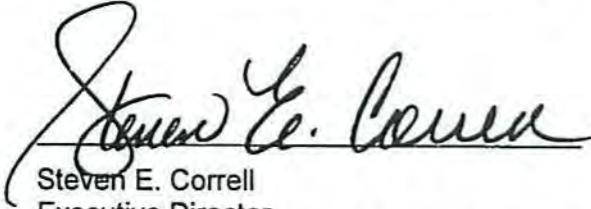
43. This MOA will enter into force on the day it is signed by the last Party and it will remain in effect until terminated pursuant to paragraph 57, 59, or 60 of this MOA
44. Participating Nlets agencies may leave the system. If an Nlets member agency withdraws from Nlets, Nlets will provide written notice to DHS at least thirty days prior to effective date of withdrawal and Appendix 1 will be updated to reflect the change. If Nlets terminates a member agency's authorized use of Nlets, then Nlets will contact the DHS as soon as practical to inform DHS of the termination and to discuss the effects of the termination.
45. Except as otherwise provided, this MOA may be amended by the mutual written consent of the signatories, delegates or successors.
46. This MOA may be terminated at any time upon the mutual written consent of the signatories, delegates or successors. In the event that both Parties consent to terminate this MOA, the Parties will consult prior to the date of termination to ensure termination on the most economical and equitable terms.
47. Either party may terminate this MOA upon 30 days written notice to the other party. Such notice will be the subject of immediate consultation by the Parties to decide upon the appropriate course of action. In the event of such termination, the following will apply:
 - a) The terminating party will assume full responsibility for all obligations agreed upon by this MOA, including continued and full participation in the sharing of information between all MOA signatories, through the effective date of termination.
 - b) Each party will pay all costs incurred as a result of the termination of this MOA.
 - c) All rights, obligations, responsibilities, limitations, and other understandings with respect to the disclosure and use of all information received during a party's participation in this MOA shall survive any termination.
 - d) No additional penalties shall be imposed on the party initiating the termination of the partnership set forth in this MOA if notice is given within 30 days of the proposed termination.

In witness thereof, the Parties have executed this MOA by the signatures of the duly authorized officials from DHS and Nlets.



John Morton
Assistant Secretary,
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

6/29/10
Date



Steven E. Correll
Executive Director
The International Justice & Public Safety Network

1/27/10
Date