

**Memorandum of Understanding Between
U.S. Customs and Border Protection and the Texas National Guard**

This memorandum of understanding (the MOU) is entered into between U.S. Customs and Border Protection (CBP) and the Texas National Guard (Texas) to operationalize the Finding by the Acting Secretary of the Department of Homeland Security (DHS) on January 23, 2025, entitled, Finding of Mass Influx of Aliens (the Finding).

I. Authorities

This MOU is entered into by CBP pursuant to 8 U.S.C. §§ 1103(a)(10), 1357, 28 C.F.R. §§ 65.80–85, and DHS Delegation 7010.3.2.

This MOU is entered into by Texas pursuant to Article IV, Sections 7 and 10 of the Texas Constitution, Section 437.002 of the Texas Government Code, and Executive Order GA-54.

II. Purpose

The purpose of this MOU is to grant to Texas National Guard personnel, in a State Active Duty status, authority under Title 8 to exercise the duties and functions of an immigration officer as detailed herein. This authority shall be exercised only under the supervision and direction of CBP officials.

III. Definitions

Members of the Texas National Guard, in a State Active Duty status, are authorized by state law to serve as officers “executing state law as the public interest or safety requires” pursuant to Section 431.111 of the Texas Government Code, as further evidenced by Executive Order GA-41, and therefore qualify as “law enforcement officers” for purposes of this MOU under 8 U.S.C. § 1103(a)(10), authorized to assist CBP officials engaged in enforcing federal immigration laws pursuant to the duties described in 6 U.S.C. § 211(c).

IV. Effective date

This MOU is effective upon signature of both parties and expires when the Finding expires or when either party terminates the MOU. If either party notifies the other of an intent to terminate, all delegated Title 8 authority terminates immediately, except to the extent necessary to transfer custody of aliens to CBP who are in the custody of authorized Texas personnel. If the Finding is extended by the Secretary, or if the Secretary makes a similar Finding of an influx of aliens under 8 U.S.C. § 1103(a)(10) in the future, the parties may agree via email to extend or renew this MOU through the expiration of that Finding. To be a similar Finding, the Finding must cover all or part of Texas. CBP is responsible for notifying Texas by email of the entry, expiration, or extension of any such Finding.

V. Authorized immigration functions

- a) Any Texas National Guard personnel, on State Active Duty, is authorized to perform the immigration functions specified below. The Texas National Guard will decide which officers may perform these functions and provide a written list of the names and titles of such officers to CBP, to be updated at regular intervals so that CBP has accurate information concerning the Texas officers operating under this MOU. Any CBP official who is supervising a Texas National Guard official may, at any time and for any reason, withdraw authorization for that official to exercise Title 8 authority.
- b) The Title 8 authority specified below may be performed only under the supervision and direction of a CBP official. Any Texas National Guard personnel, on State Active Duty, performing Title 8 functions must have at least one CBP official embedded for the assigned mission. At all times, Texas National Guard personnel performing a Title 8 function must be able to speak to a CBP official, whether by cellular phone, radio, or other similar technology.
- c) CBP may, in its discretion, designate CBP officials to provide supervision and direction to Texas National Guard personnel pursuant to this MOU. CBP will provide the names and titles of such CBP officials in writing to Texas.
- d) The Secretary of Homeland Security has waived any applicable training requirements. But CBP may determine that authorized Texas National Guard personnel are capable of performing the duties listed herein or choose to provide training in its discretion.

- e) Texas National Guard personnel acting pursuant to this MOU may exercise the authorities of immigration officers, as set forth in 8 U.S.C. § 1357, and as provided in 8 U.S.C. § 1103(a)(10), and perform or exercise any other powers, privileges, or duties conferred or imposed by applicable law or regulation on immigration officers. The immigration officer functions that Texas National Guard personnel may perform under these authorities include the following:
- i. Investigating aliens for civil immigration violations to the same degree as a similarly situated CBP official may do so.
 - ii. Arresting aliens for civil immigration violations to the same degree as a similarly situated CBP official may do so.
 - iii. Transporting aliens to the same degree as similarly situated CBP official may do so, including transportation for the purposes of detention and transportation for the purposes of removal and/or repatriation.
- f) At any time when Texas National Guard personnel, on State Active Duty, are acting under Title 8 authority, Texas National Guard personnel are subject to the same statutes, regulations, standards of conduct, and other policies as CBP officials. To the extent that Texas policies or standards are inconsistent with CBP policies or standards, Texas personnel acting under this MOU shall, where consistent with applicable law, adhere to CBP policies and standards in exercising Title 8 authority. Texas National Guard personnel should coordinate with CBP officials when inconsistencies cannot be resolved. The complaint and resolution procedures regarding allegations of misconduct by Texas National Guard personnel under this MOU shall be the same as for a CBP official, except to the extent that CBP decides to set up an alternative complaint and resolution procedure. CBP shall record and monitor any such complaints against Texas National Guard personnel. Any Texas National Guard personnel found to have engaged in misconduct under this MOU shall face appropriate disciplinary or other action as determined by the Texas National Guard.
- g) CBP commits to work with the Department of Justice concerning the possible representation of Texas National Guard personnel acting under this MOU.

- h) Texas National Guard personnel authorized under this MOU may be entitled to privileges, immunities, or defenses under state law for actions taken under color of state law outside the scope of this MOU. Texas National Guard personnel authorized under this MOU may be entitled to privileges, immunities, or defenses under federal law for actions taken under color of federal law within the scope of this MOU.
- i) Texas National Guard shall cooperate fully in any federal investigation related to allegations of misconduct or wrongdoing resulting from Texas National Guard personnel performance of Title 8 functions and implementation of this agreement.

VI. Use of equipment

Unless otherwise determined by a relevant CBP official, Texas National Guard personnel will not utilize CBP equipment for purposes of this MOU. Texas National Guard personnel will use the same equipment issued for their State Active Duty responsibilities.

VII. Costs and reimbursement

- a) The parties agree that Texas is responsible for all costs associated with this MOU. Texas may provide CBP access to Texas resources and property at Texas's discretion.
- b) The parties agree that Texas may be responsible for liabilities that arise as a result of the implementation of this MOU, subject to Paragraphs V(g) and V(h).
- c) Although CBP is not required to reimburse expenses, Texas will maintain records of operational expenditures incurred as a result of providing assistance under this MOU in the event CBP chooses to reimburse certain expenditures. *See, e.g., 28 C.F.R. §§ 65.80–65.85.*

VIII. Media policy

The parties are free to share with the media the existence of this MOU. Specific responses to media requests and/or the release of documents must be coordinated with CBP and are subject to CBP's direction and control.

IX. Amendment

Any amendments to this MOU must be in writing and signed by the parties or their delegates. An email agreement to amend this MOU will satisfy this provision.


X. Miscellaneous

- a) This MOU does not create any rights, benefits, or privileges for any third party.
- b) This MOU does not abrogate or abridge any constitutional or civil rights protections.

By signing below, the parties agree to be bound by the terms of this MOU.



Pete R. Flores
Acting Commissioner of CBP



Greg Abbott
Governor of Texas

01-31-25

Date

01/31/2025

Date