

MODIFICATION TO THE IMPLEMENTING ARRANGEMENT BETWEEN THE
DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION OF AUSTRALIA, ON
THE ONE SIDE, AND THE DEPARTMENT OF STATE AND THE DEPARTMENT OF
HOMELAND SECURITY OF THE UNITED STATES OF AMERICA, ON THE OTHER
SIDE, CONCERNING THE SHARING OF VISA AND IMMIGRATION INFORMATION

The Department of Home Affairs of Australia, formerly known as the Department of Immigration and Border Protection, on the one side, and the Department of State and the Department of Homeland Security of the United States of America, on the other side, each side hereinafter referred to as a "Participant," and the two sides referred together as the "Participants,"

CONSIDERING the Implementing Arrangement between the Department of Immigration and Border Protection of Australia, on the One Side, and the Department of State and the Department of Homeland Security of the United States of America, on the Other Side, Concerning the Sharing of Visa and Immigration Information, signed at London, United Kingdom on September 09, 2015 (hereinafter "the Implementing Arrangement");

NOTING the Statement of Intent among the Partners of the Migration Five for Notification Regarding Bilateral Secure Real-Time Platform Activity signed by Migration Five partners on November 19, 2019;

RECOGNISING that paragraph 34 of the Implementing Arrangement provides for the possibility of a modification;

DESIRING to add a new data element to the Participants' response to a query and response to a reciprocal query, so the Participants may notify each other, whenever permitted and practicable, that another Migration Five partner also has information relevant to assisting in the effective administration and enforcement of the requesting Participant's immigration laws and to make other modifications to the Implementing Arrangement;

NOW THEREFORE, the Participants intend to modify the Implementing Arrangement as follows:

1. Recognize that the Department of Immigration and Border Protection of Australia is now the Department of Home Affairs of Australia by:
 - a. Replacing all references to "Department of Immigration and Border Protection of Australia" with "Department of Home Affairs of Australia"; and
 - b. Replacing all references to "DIBP" with "Home Affairs";

2. Modify paragraph 1 under the heading "Definitions" by adding a new subparagraph (vi):
 "(vi) 'Migration Five Partner Match Indicator(s)' means a data element that indicates to the Requesting Participant that another Migration Five Partner may have relevant information about the subject of the query because that Migration Five Partner has previously shared information on that individual with the Providing Participant."
3. Modify paragraph 4 to add the following sentence at the end of the paragraph: "For Australia, this would include, but is not limited to, Information that could be used in the investigation or prosecution of crimes for which the death penalty could be applied."
4. Reflect current practice with respect to the annual review by deleting paragraph 25, including all subparagraphs, under the heading "Review and Performance Monitoring" and replacing it as follows:

" 25. For purposes of the review and consultation processes described in Article 11 of the Agreement, the Participants intend to review on an annual basis the volume of transactions and the outcomes and the timeliness of the responses to Queries based on mutually decided performance and management measurements, which may include:

 - (i) The number of Queries sent;
 - (ii) The number and percentage of matches;
 - (iii) The number and severity of any security breaches of the information sharing system, databases, or personal information shared under this Implementing Arrangement, as well as a summary of remedial actions taken; and
 - (vi) The number and severity of any privacy breaches of the information sharing system, databases, or personal information shared under this Implementing Arrangement as well as a summary of remedial actions taken."
5. Modify Annex A under the heading "Data Elements to be provided following a match (subject to availability)" to add a new data element by:
 - a. Deleting "and" at the end of subparagraph (jj); and
 - b. Replacing "." with ";" at the end of subparagraph (kk); and
 - c. Adding new subparagraph (ll): "ll. Migration Five Partner Match Indicator(s), whenever permitted and practicable."
6. Modify Annex B under the heading "Data Elements to be provided following a Reciprocal Query (subject to availability)" to add a new data element by:
 - a. Replacing "." with ";" at the end of subparagraph (t); and
 - b. Adding new subparagraph (u): "u. Migration Five Partner Match Indicator(s), whenever permitted and practicable."

This Modification to the Implementing Arrangement is expected to become effective upon signature by all Participants.

Signed in duplicate.

For the Australian Side:

THE DEPARTMENT OF HOME AFFAIRS OF
AUSTRALIA:

s. 22(1)(a)(ii)

Place: 2 Constitution Ave. Canberra
Date: 24 May 2022.

For the U.S. Side:

THE DEPARTMENT OF STATE OF
THE UNITED STATES OF AMERICA:

s. 47F(1)

Place: Washington, DC.
Date: September 13, 2022

THE DEPARTMENT OF HOMELAND
SECURITY OF THE UNITED STATES
OF AMERICA:

s. 47F(1)

Place: Washington, DC
Date: July 27, 2022

Implementing Arrangement between the Department of Immigration and Border Protection of Australia, on the One Side, and the Department of State and the Department of Homeland Security of the United States of America, on the Other Side, concerning the sharing of visa and immigration information.

The Department of Immigration and Border Protection (DIBP) of Australia, on the one side, and the Department of State (DoS) and the Department of Homeland Security (DHS) of The United States of America, on the other side, each side hereinafter referred to as a "Participant" and the two sides referred to as "Participants",

Regarding the Agreement between the Government of Australia and the Government of the United States of America for the Sharing of Visa and Immigration Information, done at Canberra, on 27 August 2014 ("the Agreement");

Considering that the Government of Australia and the Government of the United States of America are Parties to the Agreement, which provides in Article 4 for the development of implementing arrangements consistent with their respective domestic laws;

Noting that DIBP is the department responsible for the administration and enforcement of immigration laws for Australia and that the DoS and DHS are the departments primarily responsible for the administration and enforcement of immigration laws for the United States of America;

Recognizing that in Article 5 of the Agreement the United States and Australia have undertaken not to use or further disclose Information except in accordance with the Agreement or otherwise as required under domestic law.

HAVE COME to the following understanding:

Definitions

1. The Participants understand that:

- (i) The definitions in the Agreement are incorporated by reference in this Implementing Arrangement.
- (ii) "Requesting Participant" means the Participant to this Implementing Arrangement that has initiated the primary Query.
- (iii) "Providing Participant" means the Participant to this Implementing Arrangement that receives the primary Query from the Requesting Participant.
- (iv) "Query" means a Participant's request for Information (as defined in Article 1 of the Agreement), through an electronic search process requiring minimal human intervention and any related, subsequent request for additional supporting data.
- (v) "Identifier" means agreed biometric and/or biographic data used in a Query.

Purpose

2. Consistent with Article 2 of the Agreement, the Participants intend to exchange Information, consistent with their respective domestic laws and policies, to assist in the effective administration and enforcement of the immigration laws of their respective countries.
3. Pursuant to Article 4 of the Agreement, this Implementing Arrangement describes how the Participants intend to exchange Information. The Requesting Participant intends to make a Query of the Providing Participant's applicable Identifier database or databases, and, on the basis of an Identifier match, the Participants intend to exchange Information in accordance with the scope and the purpose of the Agreement.

Scope and Process for the Exchange of Information

4. The Participants understand that if a Participant determines that exchanging certain types of Information is inconsistent with its domestic laws, or is detrimental to its national sovereignty, national security, public policy, or other important national interest, a Participant may decline to provide any such Information, or may offer to provide all or part of the Information subject to terms and conditions as it may specify. For the United States, this would include, but is not limited to, Information relating to applicants for and beneficiaries of certain applications under U.S. law, including applications pertaining to Victims of Human Trafficking (T) or Victims of Criminal Activity (U) non-immigrant status, and Violence Against Women Act (VAWA) relief, which 8 U.S.C. Section 1367 protects from disclosure.

a. Sending Queries:

5. The Participants intend to send Queries to each other seeking Information on individuals who have applied for admission to enter the Requesting Participant's country, or for a visa or an immigration benefit from the Requesting Participant; on individuals who are the subject of an investigation in relation to a possible immigration-related violation or issue of non-compliance; or to establish the basis for a determination relative to admissibility, eligibility for a visa or other immigration benefit, or eligibility to remain in the territory of the Requesting Participant's country; or for any other matter consistent with Article 2 of the Agreement.
6. The Participants intend to mutually establish the estimated maximum annual volume of Queries that may be initiated pursuant to this Implementing Arrangement. This estimated maximum may be adjusted at any time by mutual consent.
7. The Participants intend that a Query by a Requesting Participant include the following Information:
 - (i) Relevant Identifier;
 - (ii) A unique reference number for each set of Identifiers ;

- (iii) The case type of the Query. In no circumstance should the case type disclose an individual's identity where the individual has or has sought a protected status, which for the United States of America includes 8 U.S.C. Section 1367 and for Australia includes certain information pertaining to such individuals under section 336F of the Migration Act 1958 (Cth).
- 8. The Participants intend to initially use fingerprints as the Identifier in a Query. Additional Identifiers may be added with the mutual, written consent of the Participants.

b. Responding to Queries:

- 9. The Providing Participant intends to respond to all Queries, except as noted in paragraph 4, as follows:
 - a) By indicating when an Identifier match is established and providing associated Information to the Requesting Participant, consistent with the Agreement and the Providing Participant's domestic laws; or
 - b) By indicating that no Identifier match has been established.
- 10. Following a data match, the Providing Participant intends to send the data elements, as described in Annex A, subject to availability and practicability, in the Providing Participant's applicable database or databases.

c. Reciprocal Queries:

- 11. Following the receipt of a match response with the available data elements, the Providing Participant may request that the Requesting Participant provide the data elements, as described in Annex B for reciprocal queries, subject to availability and practicability, in relation to the individual who was the subject of the initial Query.

d. Managing Datasets

- 12. The datasets identified in Annex A and Annex B are expected to be replicated in any technical documentation developed by the Participants to support this Implementing Arrangement.
- 13. The Participants acknowledge that the provisions of this Implementing Arrangement, including the data elements outlined in Annex A and Annex B and any future modifications pursuant to paragraph 36 of this Implementing Arrangement, are intended to be applied should any discrepancy arise between this Implementing Arrangement and any other operational or technical documents drafted by the parties to support this Implementing Arrangement.

e. Queries Requesting Additional Information:

- 14. If, after receiving the available data elements outlined in Annex A, the Requesting Participant desires to obtain additional Information to effectively administer or enforce its immigration

law, it may request additional Information through appropriate operational points of contact, described in Annex C. The Providing Participant endeavors to provide any such Information that may be shared and as is practicable in a timely manner.

15. When a Providing Participant provides additional Information in response to a request under paragraph 4, the Requesting Participant intends to apply the terms of the Agreement to the exchange of any such Information, including the processing and use of such Information.
16. In response to a request under paragraph 14, when specific facts associated with the Information provided may warrant additional restrictions, the Providing Participant may impose additional conditions on the processing and use of any additional Information and/or documentation it provides to the Requesting Participant. If the Requesting Participant accepts the Information, the Participants understand that the receipt itself demonstrates that the Requesting Participant intends to apply the conditions to the exchange of Information, including its processing or use of the data.

Privacy Safeguards

17. The Participants are to collect, use, disclose, store and protect any Information shared pursuant to this Implementing Arrangement in accordance with the Agreement and as required or authorised by domestic law.
18. The Participants intend to notify each other in writing of their respective mechanisms for providing individuals with access and correction opportunities for Information relating to those individuals that is received under this Implementing Arrangement.
19. The Participants intend to protect the technical connection between their relevant systems through appropriate means, including mutually decided upon technical and physical safeguards.
20. The Participants intend to mark Information retained as having been received from the other Participant.
21. The Participants intend not to retain, in any form, the Identifier received as part of a Query. The Participants intend only to retain the relevant reference number received as part of the Query to be used for audit, correction, performance monitoring and quality assurance purposes.
22. The Participants understand that Information obtained in response to a Query may be retained only so long as necessary for the purpose for which the Information was requested, in accordance with the receiving Participant's respective applicable retention and disposal schedules, and in accordance with the laws of the receiving country .

23. The Participants intend to maintain the appropriate user access controls in their respective system(s), to limit access to Information received and disclosure of that Information to individuals authorized by that Participant, who have the appropriate security clearance and a need to know.
24. The Participants intend to maintain an accounting of records shared in response to a Query.

Review and Performance Monitoring

25. For purposes of the review and consultation processes described in Article 11 of the Agreement, the Participants intend to review on an annual basis the volume of transactions and the outcomes and the timeliness of the responses to Queries based on mutually decided performance and management measurements, which may include:
 - (i) The number of Queries sent and percentage of total application volume;
 - (ii) The number and percentage of matches;
 - (iii) The number of cases of identity discrepancies detected;
 - (iv) The number of exchanges from which Information was provided to visa, immigration and border control decision makers before they made a decision;
 - (v) The number and severity of any security breaches of the information sharing system, databases, or personal information shared under this Implementing Arrangement, as well as a summary of remedial actions taken; and
 - (vi) The number and severity of any privacy breaches of the information sharing system, databases, or personal information shared under this Implementing Arrangement as well as a summary of remedial actions taken.
26. The Participants intend to carry out regular quality assurance activities, including a review of applicable privacy safeguards, using a mutually decided methodology to ensure that the activities carried out under this Implementing Arrangement are consistent with its terms. These activities may include, but are not limited to, determining:
 - (i) Whether Information has been retained when it should have been destroyed;
 - (ii) Whether Information exchanged under this Implementing Arrangement has been marked as having been received from the other Participant;
 - (iii) Whether Information has been disclosed in a manner inconsistent with Article 5 of the Agreement; and
 - (iv) The number [of access] and correction requests and whether Information has been corrected in a manner consistent with the Agreement
27. The Participants intend, to the extent practicable, to share additional statistics and case studies demonstrating how this exchange of Information has assisted in the effective administration and enforcement of the immigrations laws of their respective countries.

Material Changes

28. The Participants intend to inform each other of any changes to the technical systems, laws, policies or international obligations of their respective countries that may materially affect the operation or implementation of this Implementing Arrangement.

Costs

29. The Participants understand that performance of this Implementing Arrangement is subject to their respective availability of funds. Each Participant intends to pay for its own costs and use its own equipment and personnel in performing its activities under this Implementing Arrangement. No provision in this Implementing Arrangement is intended to be interpreted to require the obligation or payment of funds, in violation of the laws of the Participants' respective countries.

Consultations

30. The Participants intend to resolve any difference in the interpretation, application or implementation of this Implementing Arrangement by mutual consultation.

Final provisions

31. This Implementing Arrangement is not legally binding, but is an expression of the purpose and intent of the Participants. Cooperation under this Implementing Arrangement is to be in accordance with each Participant's domestic legal authorities and resources and the terms of the Agreement.
32. The Participants do not intend for any provision of this Implementing Arrangement to be interpreted in a manner that would restrict practices relating to mutual assistance and other cooperation that are already in place between the Participants.
33. The Participants intend for participation under this Implementing Arrangement to commence after it has been signed by all Participants.
34. The Participants may modify this Implementing Arrangement, including the data elements as described in Annexes A and B, by mutual consent which should be expressed in writing. Participant may change its Point of Contact listed in Annex C through written notification to the other Points of Contact.
35. A Participant may cease participation in this Implementing Arrangement at any time, but should give 90 days advance written notice to the other Participant. In such event, the provisions of paragraphs 17 to 24 continue to apply to Information shared under this Implementing Arrangement.

Signatories

The foregoing represents the understandings reached between the Participants.

Signed at London, this 9 day of September 2015 in duplicate.

For the Australian side:

s. 22(1)(a)(ii)

Rachel Noble PSM
Deputy Secretary Policy Group
The Department of Immigration and Border
Protection of Australia

For the United States side:

s. 47F(1)

Assistant Secretary for Consular Affairs
The Department of State of the United States of
America

s. 47F(1)

Assistant Secretary for International Affairs
The Department of Homeland Security of the
United States of America

Annex A: Data Elements to be provided following a match (subject to availability)

- a. Providing Participant's subject specific reference number;
- b. Providing Participant's event specific reference number;
- c. Date fingerprinted;
- d. Reason fingerprinted;
- e. Location fingerprinted;
- f. Last name;
- g. First name;
- h. Date of birth;
- i. Passport nationality;
- j. Country of birth;
- k. Gender;
- l. Current immigration status;
- m. Other names;
- n. Alias last name(s);
- o. Alias first name(s);
- p. Travel document number;
- q. Travel document type;
- r. Travel document issuing authority / country;
- s. Travel document expiry date;
- t. Reason for alert;
- u. Visa Refusal code;
- v. Watchlist Indicator;
- w. Scan of travel document biodata page;
- x. Scan of other marked travel document pages;
- y. Facial image;
- z. Previous immigration status;
- aa. Date removed;
- bb. Date of arrival;
- cc. Location of arrival;
- dd. Date of departure;
- ee. Location of departure;
- ff. Date of immigration application or non-biometric encounter;
- gg. Type of immigration application or non-biometric encounter;
- hh. Date of outcome of immigration application;
- ii. Outcome of immigration application;
- jj. Reason for outcome of immigration application; and
- kk. Expiry date of current leave/stay or visa.

Annex B: Data Elements to be provided following a Reciprocal Query (subject to availability)

- a. Providing Participant subject specific reference number;
- b. Providing Participant event specific reference number;
- c. Date fingerprinted;
- d. Reason fingerprinted;
- e. Location fingerprinted;
- f. Last name;
- g. First name;
- h. Date of birth;
- i. Passport nationality;
- j. Country of birth;
- k. Gender;
- l. Other names;
- m. Alias last name(s);
- n. Alias first name(s);
- o. Travel document number;
- p. Travel document type;
- q. Travel document issuing authority / country;
- r. Scan of travel document biodata page;
- s. Facial image;
- t. Date removed.

Annex C: Points of Contact

Reciprocal Queries

The following are the Participants' Points of Contact for Reciprocal Queries.

For Australia – Director Biometric Systems Services, Department of Immigration and Border Protection

For the United States of America—DoS: Managing Director, Visa Services, Bureau of Consular Affairs

Implementation and Administration

The following are the Participants' Points of Contact for the implementation and administration of this Implementing Arrangement.

For Australia – Director Identity Capability Projects, Department of Immigration and Border Protection

For the United States of America-- DoS: Managing Director, Visa Services, Bureau of Consular Affairs

For DHS: Deputy Assistant Secretary, Information Sharing Policy, Office of Strategy, Policy and Plans.

Implementing Arrangement between the Department of Immigration and Border Protection of Australia, on the One Side, and the Department of State and the Department of Homeland Security of the United States of America, on the Other Side, concerning the sharing of visa and immigration information on a case-by-case basis.

The Department of Immigration and Border Protection of Australia, on the one side, and the Department of State and the Department of Homeland Security of the United States of America, on the other side, each side hereinafter referred to as a "Participant" and the two sides referred to as "Participants";

Regarding the *Agreement between the Government of Australia and the Government of the United States of America for the Sharing of Visa and Immigration Information*, done at Canberra, on 27 August 2014 ("the Agreement");

Considering that the Government of Australia and the Government of the United States of America are Parties to the Agreement, which provides in Article 4 for the development of implementing arrangements consistent with their respective domestic laws;

Noting that the Department of Immigration and Border Protection is the department responsible for the administration and enforcement of immigration laws for Australia and that the Department of State and the Department of Homeland Security are the departments primarily responsible for the administration and enforcement of immigration laws for the United States of America;

Recognizing that in Article 5 of the Agreement Australia and the United States have undertaken not to use or further disclose Information except in accordance with the Agreement or otherwise as required under domestic law; and further recognizing that, pursuant to Article 6 of the Agreement, the Agreement is to be implemented consistent with Australia and the United States' respective obligations under United Nations (UN) treaties on human rights, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture);

Acknowledging that the sharing of Information on a case-by-case basis between the Participants is an important component, and in the legitimate interests, of maintaining fair and effective immigration.

HAVE COME to the following understanding:

1. General

- A. Information exchanged pursuant to this Implementing Arrangement is subject to the terms, including any conditions included therein, of the Agreement. Any guidance on the interpretation and application of this Implementing Arrangement is intended to be read as consistent with the Agreement.

- B. Nothing in this Implementing Arrangement, nor its discontinuation, is intended to affect the exchange of Information between the Participants under other arrangements or agreements, including other implementing arrangements to the Agreement.
- C. The Participants acknowledge that they may decline to provide all or part of the Information consistent with Article 6 of the Agreement.

2. Definitions

For the purpose of this Implementing Arrangement:

- A. Definitions in the Agreement are to be incorporated by reference within this Implementing Arrangement.
- B. **"Case-by-case basis"** constitutes any request for Information or the proactive provision of Information that is intended to support a specific individual case or operation conducted by either one or both Participants, and occurs outside of a recurring or systematic information sharing relationship.

3. Scope and Purpose

Consistent with Articles 2, 3 and 4 of the Agreement, the purpose of this Implementing Arrangement is to establish the conditions under which the Participants intend to exchange Information on a case-by-case basis to assist in the effective administration and enforcement of the immigration laws of their respective countries.

4. Information to be Exchanged

Information that may be exchanged under this Implementing Arrangement includes but is not limited to:

- A. Biographic data, including aliases
- B. Biometric data
- C. Travel document data, including scans of documents
- D. Immigration status
- E. Contact details
- F. Family details
- G. Relevant medical data
- H. Biometric transaction history
- I. Immigration history, including types of previous applications and their outcomes
- J. Other Information captured as part of an immigration application process

s. 37(2)(b), s. 47E(d)

- M. Trend analysis that is relevant to the effective administration and enforcement of immigration laws
- N. Statistical data that is relevant to the effective administration and enforcement of immigration laws

5. Exchange of Information

- A. Consistent with this Implementing Arrangement, each Participant may, on a case-by-case basis, request Information from or provide Information to the other Participant for the purpose of administering or enforcing its country's respective immigration laws.
- B. The Participants intend to designate officials authorised to exchange Information pursuant to this Implementing Arrangement. The Participants further intend to inform each other in writing of such designations or any changes therein. The Participants are to ensure that all Information exchanges, including requests, occur only between these designated officials.

6. Procedures for the Protection, Exchange, Use and Disclosure of Information

- A. The Participants intend that protection, exchange, use, and disclosure of Information will be consistent with the Agreement, including Article 8.
- B. Information exchanged between the Participants is intended to be protected by appropriate administrative, technical and physical safeguards, appropriately classified and the Information is intended to be disclosed only for uses that are consistent with the purposes described in Article 2 of the Agreement and paragraph 3 of this Implementing Arrangement.
- C. Information is intended to be transmitted via methods that conform to the approved standards of both Participants. Alternatively, Information may be hand delivered in hard copy by one Participant to the other.
- D. A Participant that has received Information under this Implementing Arrangement intends to collect, use, disclose, store and protect such Information in accordance with the Agreement and in compliance with its country's international obligations, domestic laws and/or policies.
- E. The Participants intend to limit access to Information received and the disclosure of that Information, to individuals authorized by that Participant who have the appropriate security clearance and a need to know. Such persons who have access to information received under

this Implementing Arrangement are expected to have been appropriately informed regarding the handling and restrictions on use of such Information, to promote the overall safeguarding of the Information, and to ensure compliance with the terms of this Implementing Arrangement.

- F. When the specific facts associated with Information provided under this Implementing Arrangement warrant additional restrictions, a Participant may impose conditions on the processing, use and/or onward disclosure of such Information. If the other Participant accepts the Information, the Participants intend that the receipt itself demonstrates the other Participant's intention to apply such conditions to its processing or use of the Information.

7. Implementation and Review

- A. The Participants intend to designate officials who are responsible for ensuring the implementation and administration of the provisions of this Implementing Arrangement. The Participants are to inform each other in writing of such designations and any changes.
- B. Consistent with Article 11 of the Agreement, the Participants understand that the usefulness of the Implementing Arrangement, Information shared under it, the limitations thereof, and its continued justification are subject to their ongoing domestic review and mutual consultation. Any difference in the interpretation, application or implementation of this Implementing Arrangement is to be resolved through such consultation, in accordance with Article 12 of the Agreement.

8. Access and Retention

- A. The Participants intend to notify each other in writing of their respective mechanisms for providing individuals with access and correction opportunities for Information relating to those individuals that is received under this Implementing Arrangement.
- B. The Participants intend to mark Information retained as having been received from the other Participant.
- C. The Participants understand that Information obtained under this Implementing Arrangement may be retained, consistent with Article 9 (A) of the Agreement, in accordance with the receiving Participant's respective applicable retention and disposal schedules, and in accordance with the laws of the receiving country.

9. Costs

The Participants understand that performance of this Implementing Arrangement is subject to their respective availability of funds. Each Participant intends to pay for its own costs and use its own equipment and personnel in performing its activities under this Implementing Arrangement. No provision of this Implementing Arrangement is intended to be interpreted to require the obligation or payment of funds, in violation of the laws of the Participants' respective countries.

10. Commencement, Modification and Discontinuation

- A. This Implementing Arrangement is not legally binding, but is an expression of the purpose and intent of the Participants. Cooperation under this Implementing Arrangement is to be in accordance with the international legal obligations, domestic law, policies and resources of each Participant's country, and consistent with the terms of the Agreement.
- B. The Participants intend for participation under this Implementing Arrangement to commence on the last date of signature by the Participants.
- C. The Participants may modify this Implementing Arrangement by mutual consent in writing.
- D. A Participant intending to cease participation in this Implementing Arrangement is expected to give 90 days advance written notice to the other Participant. In such an event, the Participants intend for the provisions of paragraph 6 to continue to apply to Information exchanged under this Implementing Arrangement.

Signatories

For the Australian Side:

s. 22(1)(a)(ii)

THE DEPARTMENT OF IMMIGRATION AND
BORDER PROTECTION OF AUSTRALIA

At Washington DC

Date June 21 2017

For the United States of America Side:

s. 47F(1)

THE DEPARTMENT OF STATE
OF THE UNITED STATES OF AMERICA

At Washington, DC

Date June 21, 2017

s. 47F(1)

THE DEPARTMENT OF HOMELAND SECURITY
OF THE UNITED STATES OF AMERICA

At WASHINGTON, D.C.

Date JULY 10, 2017

Implementing Arrangement between the Department of Home Affairs of Australia, on the One Side, and the Department of Homeland Security, U.S. Immigration and Customs Enforcement of the United States of America, on the Other Side, concerning the proactive sharing of Information.

The Department of Home Affairs of Australia, on the one side, the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement of the United States of America, on the other side, each side hereinafter referred to as a "Participant" and the two sides referred to as "Participants";

Regarding the Agreement between the Government of Australia and the Government of the United States of America for the Sharing of Visa and Immigration Information, done at Canberra, on 27 August 2014 ("the Agreement");

Considering that the Government of Australia and the Government of the United States of America are Parties to the Agreement, which provides in Article 4 for the development of implementing arrangements consistent with their respective domestic laws;

Noting that the Department of Home Affairs is the department responsible for the administration and enforcement of immigration laws in Australia and that the Department of Homeland Security is the department primarily responsible for the administration and enforcement of immigration laws in the United States of America;

Recognizing that in Article 5 of the Agreement the United States and Australia have undertaken not to use or further disclose information except in accordance with the Agreement or otherwise as required under domestic law; and further recognizing that, pursuant to Article 6 of the Agreement, the Agreement is to be implemented consistent with their respective obligations under United Nations (UN) treaties on human rights, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture);

Acknowledging that the sharing of information between the Participants is an important component, and in the legitimate interests, of maintaining fair and effective immigration;

Have come to the following understanding:

1. General

- A. Information exchanged under this Implementing Arrangement is intended to be subject to the terms, including any conditions included therein, of the Agreement. Any guidance on the interpretation and application of this Implementing Arrangement is intended to be read as consistent with the Agreement.**
- B. Nothing in this Implementing Arrangement, nor its discontinuation, is intended to affect the exchange of information between the Participants under other arrangements or agreements, including other implementing arrangements to the Agreement.**

- C. The Participants acknowledge that they may decline to provide all or part of the information consistent with Article 6 of the Agreement.

2. Definitions

For the purpose of this Implementing Arrangement:

- A. Definitions in the Agreement are intended to be incorporated by reference within this Implementing Arrangement.

3. Scope and Purpose

Consistent with Articles 2, 3 and 4 of the Agreement, the purpose of this Implementing Arrangement is to establish the conditions under which the Participants intend to proactively exchange and retain information, including biometric information, automatically or manually, to assist in the effective administration and enforcement of the immigration and border security laws of their respective countries

s. 47E(d), s. 37(2)(b)

4. Information to be Exchanged

Information that may be exchanged and retained under this Implementing Arrangement includes but is not limited to the following data elements. This paragraph must be read in conjunction with paragraph 5B and Annex A:

- A. Biographic data, including aliases
- B. Biometric data
- C. Travel document data, including scans of documents
- D. Immigration status
- E. Contact details
- F. Family details
- G. Medical data that is relevant to the effective administration and enforcement of immigration laws
- H. Biometric transaction history
- I. Immigration history, including types of previous applications and their outcomes
- J. Other information captured as part of an immigration application process

K.

s. 47E(d), s. 37(2)(b)

L.

- M. Trend analysis that is relevant to the effective administration and enforcement of immigration laws
- N. Statistical data that is relevant to the effective administration and enforcement of immigration laws

5. Exchange of Information

- A. Consistent with this Implementing Arrangement, for the purpose of administering or enforcing its country's respective national and border security and immigration laws, the Participants may proactively exchange or request information about Nationals of a Third Country, as defined in Article 1(A) of the Agreement, from one another, and may provide or respond with information to one another. The Participants do not intend to exchange information pertaining to Nationals of the Participant's countries under this Implementing Arrangement.**
- B. The categories of Nationals of a Third Country about whom information, as set forth in Section 4, is to be exchanged under this Implementing Arrangement are described in Annex A. Annex A should be read in conjunction with paragraph 4.**
- C. For the manual exchanges of information, the Participants intend to designate officials authorised to exchange information pursuant to this Implementing Arrangement. The Participants further intend to inform each other in writing of such designations or any changes therein. The Participants are to ensure that all information exchanges, including requests, occur only between these designated officials.**

6. Procedures for the Protection, Exchange, Use, and Disclosure of Information

- A. The Participants intend that protection, exchange, use, and disclosure of information will be consistent with the Agreement, including Article 8 of the Agreement.**
- B. Information exchanged between the Participants is intended to be protected by appropriate administrative, technical and physical safeguards, appropriately classified and the information disclosed only for uses that are consistent with the purposes described in Article 2 of the Agreement and paragraph 3 of this Implementing Arrangement.**
- C. Information is intended to be transmitted via methods that conform to the approved standards of both Participants. Alternatively, the information may be hand delivered in hard copy by one Participant to the other.**
- D. A Participant that has received information under this Implementing Arrangement intends to collect, use, disclose, store and protect such information in accordance with the Agreement and in compliance with its country's international obligations, domestic laws and/or policies.**
- E. The Participants intend to limit access to information received and the disclosure of that information, to individuals authorized by that Participant who have the appropriate security clearance and a need to know. Such persons who have access to information received under this Implementing Arrangement are expected to have been appropriately informed regarding the**

handling and restrictions on use of such information, to promote the overall safeguarding of the information, and to ensure compliance with the terms of this Implementing Arrangement.

- F. When the specific facts associated with information provided under this Implementing Arrangement warrant additional restrictions, a Participant may impose conditions on the processing, use, and/or onward disclosure of such information. If the other Participant accepts the information, the Participants intend that the receipt itself demonstrates the other Participant's intention to apply such conditions to its processing or use of the information.
- G. The Participants intend to provide notification in writing as soon as practicable after becoming aware of any accidental or unauthorized access, use, disclosure, modification or disposal of information received under this Implementing Arrangement, and as soon as practicable thereafter, to furnish all necessary details of the accidental or unauthorized access, use, disclosure, modification, or disposal of that information.
- H. The Participants intend to provide notification of any errors discovered in information shared under this Implementing Arrangement as soon as practicable. The Participants are expected to take appropriate action with regard to any request from the other Participant for additions, deletions, or corrections to the information, including in any disseminated products that contain such information. Location and correction of any records that contain the information, if appropriate, are expected to occur as soon as is practicable, but no later than ten (10) working days from the date of notification of error.
- I. The Participants understand that, where a providing Participant determines that providing assistance under this Implementing Arrangement would infringe upon its sovereignty, security, public policy or other substantive national interest, or would be inconsistent with its international law obligations, or its domestic laws and regulations, including any legal requirement relating to non-compliance with assurances regarding limitations on use or confidentiality, it may refuse or withhold assistance in whole or in part, may postpone its assistance, or may stipulate that the provision of such assistance may be dependent upon the satisfaction of certain conditions or requirements.
- J. In the event that assistance in response to a request is postponed, or denied in whole or part, the requested Participant is expected to endeavor to promptly notify the requesting Participant, and provide a statement of the reasons for postponement or denial of the request, unless otherwise prohibited by law, regulation, directive, policy, or procedure.
- K. Information obtained under this Implementing Arrangement is intended to be retained only as long as necessary to carry out the purposes stated in this Implementing Arrangement and in accordance with the receiving Participant's domestic laws, regulations, directives, policies, and procedures, and is expected to be disposed of thereafter, in accordance with the receiving Participant's domestic laws, regulations, directives, policies, and procedures.

7. Implementation and Review

- A.** The Participants intend to designate officials who are responsible for ensuring the implementation and administration of the provisions of this Implementing Arrangement. The Participants are to inform each other in writing of such designations and any changes.
- B.** Consistent with Article 11 of the Agreement, the Participants understand that the usefulness of the Implementing Arrangement, information shared under it, the limitations thereof, and its continued justification are subject to their ongoing domestic review and mutual consultation. Any difference in the interpretation, application or implementation of this Implementing Arrangement is expected to be resolved through such consultation, in accordance with Article 12 of the Agreement.

8. Access and Retention

- A.** The Participants intend to notify each other in writing of their respective mechanisms for providing individuals with access and correction opportunities for information relating to those individuals that is received under this implementing Arrangement.
- B.** The Participants intend to mark information retained as having been received from the other Participant.
- C.** The Participants understand that information obtained under this Implementing Arrangement may be retained, consistent with Article 9 (A) of the Agreement, in accordance with the receiving Participant's respective applicable retention and disposal schedules, and in accordance with the laws of the receiving country.

9. Costs

The Participants understand that their cooperation under this Implementing Arrangement is subject to their respective availability of funds. Each Participant intends to pay for its own costs and use its own equipment and personnel in performing its activities under this Implementing Arrangement. No provision of this Implementing Arrangement is intended to be interpreted to require the obligation or payment of funds, in violation of the laws of the Participants' respective countries.

10. Commencement, Modification and Discontinuation

- A.** This Implementing Arrangement is not legally binding, but is an expression of the purpose and intent of the Participants. Cooperation under this Implementing Arrangement is to be in accordance with the international legal obligations, domestic law, policies, and resources of each Participant's country, and consistent with the terms of the Agreement.

- B. The Participants intend for participation under this Implementing Arrangement to commence on the last date of signature by the Participants.
- C. The Participants may modify this Implementing Arrangement, including the information categories as described in Annex A, upon their mutual consent in writing.
- D. Under the provisions of Section 10.C, the Participants intend that Annex A be modified should information categories change or additional categories added to the information shared under this Implementing Arrangement. Any such modifications would be made upon the Participants' mutual consent in writing.
- E. A Participant intending to cease participation in this Implementing Arrangement is expected to give 90 days' advance written notice to the other Participant. The Participants may also terminate this Implementing Arrangement at any time by mutual consent in writing. In such an event, the Participants intend for the provisions of paragraph 6 to continue to apply to information exchanged under this Implementing Arrangement.

Signatories

For the United States Side:

s. 47F(1)

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
OF THE DEPARTMENT OF HOMELAND SECURITY
OF THE UNITED STATES OF AMERICA

At Washington, DC, USA

Date October 17, 2018

For the Australian Side:

s. 22(1)(a)(ii)

THE DEPARTMENT OF HOME AFFAIRS OF AUSTRALIA

At Canberra, Australia

Date 9 November 2018

Annex A: Categories of Nationals of a Third Country

The following are the categories of Nationals of a Third Country regarding whom the Participants intend to exchange information under this Implementing Arrangement:

- i. On the United States side: Nationals of a Third Country, as defined in Article 1(A) of the Agreement, who are subjects of Department of Homeland Security-owned data indicating they have been removed from or found inadmissible to the United States based upon a criminal conviction, charge, or preponderance of evidence related to a sex offense.**
- ii. On the Australian side: Nationals of a Third Country, as defined in Article 1(A) of the Agreement, who are the subjects of Department of Home Affairs-owned data indicating they have had Visas cancelled based on a criminal conviction or charge relating to:**
 - 1. Child Sex Offenses**
 - 2. Child Pornography**
 - 3. Rape, Indecent Assault**
 - 4. People Trafficking**
 - 5. People Smuggling**
 - 6. Torture and Slavery**



**Letter of Agreement to amend the
High Value Data Sharing Protocol
Memorandum of Understanding**

between

**The Australian Department of Immigration and Citizenship
(DIAC)**

and

**The United States Department of Homeland Security (DHS)
and the United States Department of State (DoS)**

The original High Value Data Sharing Protocol Memorandum of Understanding between DIAC and DHS and DoS came into effect on 25 January 2010.

With the introduction of partial automation using the Secure Real Time Platform (SRTP) the MOU has been modified to reference this new process. The modifications are set out as an Addendum to the original MOU and must be read in conjunction with it.

Changes to the original MOU as outlined in this Addendum are made in accordance with paragraph 8.2 of that MOU, which allows for modifications that are "consistent with the original nature and scope of that MOU and with the effective operation of the FCC Protocol" and that are mutually decided in writing by each country's Protocol Manager.

The Protocol Manager for each country is the designated official as specified in paragraph 3.3 of the MOU and is responsible for ensuring that participants implement the provisions in the MOU. Modifications have been mutually determined in consultation with the relevant project, policy and legal personnel from each agency and this letter, when signed, formalises their acceptance.

**FOR THE COMMONWEALTH OF
AUSTRALIA AS REPRESENTED BY
THE DEPARTMENT OF
IMMIGRATION AND CITIZENSHIP**

**FOR THE UNITED STATES OF AMERICA
AS REPRESENTED BY THE
DEPARTMENT OF HOMELAND
SECURITY**


s. 22(1)(a)(ii)

Director, Identity Resolution Centre
FCC Protocol Manager

s. 47F(1)

FCC Protocol Manager

Date

13 DECEMBER 2012

Date

December 13, 2012

ADDENDUM

To the Memorandum of Understanding between the **Australian Department of Immigration and Citizenship (DIAC)** and the **U.S. Department of Homeland Security (DHS)** and the **U.S. Department of State (DoS)** for the purposes of the Implementation of the **High Value Data Sharing Protocol** between the Nations of the Five Country Conference, which became effective in January 2010.

Changes to the original MOU as outlined in this addendum are made in accordance with paragraph 8.2 of that MOU, which allows for modifications of the MOU that are "consistent with the original nature and scope of the MOU and with the effective operation of the FCC protocol" as mutually decided in writing by each country's Protocol Manager.

This addendum outlines the changes in arrangements that allow for partial automation of fingerprint checking with the initial implementation of the Secure Real-Time Platform (SRTTP) link between DIAC and DHS. Full automation would require a new instrument to govern full system-to-system data exchange.

Modifications in this addendum have been mutually determined in consultation with relevant project/policy personnel from each agency and are in effect as of 15 December 2012:

The following table indicates the sections in the MOU affected by the changes:

Original MOU	Additions/Revisions
Security classification – ' <i>Restricted</i> ' for Australia and ' <i>For Official Use Only</i> ' for the USA.	While the original MOU was signed by both countries agreeing to a high security rating, the amendment reflects a lower security rating for Australia.
Section 2 – Procedures for the exchange of information	Section 2.2A added to explain the automated (SRTTP) process between the biometric identification systems of both countries. Sections 2.4 and 2.5, revised to allow for increased volume using the SRTTP. Section 2.7 revised to explain process under SRTTP. Section 2.7A added to explain process under SRTTP. Section 2.8 revised to clarify the process for

	handling biographic data for both the [REDACTED] b. 47E(1), E. 37(2) [REDACTED] Section 2.9 revised to make the notification of requests common for both SFSS and SRTP processes. Section 2.11 revised to explain process under both SFSS and SRTP. Sections 2.14 to 2.16 revised to remove references to the SFSS.
Section 4 – Information which may be exchanged	Section 4.1 revised to include SRTP process. Section 4.5 added to provide clarification on shareable data.
Section 6 – Information transfer and security	Section 6.1 amended to remove reference to "privileges being afforded to the data subject as in the case with its own citizens. " Section 6.2B added to explain SRTP process. Section 6.3 removed. DIAC security restrictions do not allow for the transfer of encrypted attachments via e-mail. Section 6.4 revised to include SRTP process. Section 6.8A added to include records management under SRTP. Section 6.14 revised to reflect current data retention policy. Section 6.15 revised to reflect current data breach notification procedures.
Section 7 – Performance and management reporting	Section 7.1 revised to include SRTP process.

1) A new Section 2.2A is added to read:

2.2A In addition to the manual process described in paragraph 2.2, data exchange under this MOU may also be performed through a Secure Real-Time Platform (SRTP) link between the automated biometric matching system of DIAC and the DHS Automated Biometric Identification System (IDENT) with associated secure gateways and links. The SRTP link is to meet all security requirements of both countries. Transmission of data through the SRTP should not commence until both countries have completed their respective security reviews and deemed that the connection is ready for the transmission of data.

2) Sections 2.4 and 2.5 are revised to read:

2.4 [REDACTED] s. 37(2)(b), s. 47E(d)

Each

Participant may provide whichever cases it considers will provide high value from the exchange, which are likely to include, but not be limited to:

- Immigration cases where the identity of the individual is unknown or uncertain;
- Immigration cases where the individual's whereabouts are unknown;
- Immigration cases where there is reason to suspect that the person has been encountered by one of the countries participating in the Protocol; and/or
- Immigration cases for the purpose of entry clearance.

2.5 The Participants' designated Protocol Managers may subsequently decide in writing or e-mail to vary the number of sets of fingerprints per year for matching.

3) Section 2.7 is revised to read:

s. 37(2)(b), s. 47E(d)

The frequency of uploads is to take into consideration the Participants' ability to handle a large volume of data. In the case of transferring data via the SRTP, the Participants may send cases individually.

4) A new Section 2.7A is added to read:

2.7A In addition to the manual process described in section 2.7, data exchange under this MOU is extended through the SRTP connection between the biometric matching system of DIAC and DHS IDENT with associated secure gateways and links.

5) Section 2.8 is revised to read:

s. 37(2)(b), s. 47E(d)

6) Section 2.9 is revised to read:

Fingerprint matching and response

2.9 Upon receipt of the request, the Providing Participant is to then search the fingerprints against its relevant biometric systems.

7) Section 2.11 is revised to read:

2.11 The Providing Participant is expected to return automated "no match" responses within 24 hours of receipt of the search request.

The Providing Participant is expected to return manual "no match" responses within 3 working days of receipt of the search request.

s. 37(2)(b), s. 47E(d)

s. 37(2)(b), s. 47E(d)

8) Section 2.14 is revised to read:

2.14 For each matching case, the Providing Participant intends to review its records of the data subject and, in accordance with the Search Code Guide and the provisions of section 4 of this MOU, determine what further information is available to provide to the other Participant, consistent with its relevant domestic law and policy. The Providing Participant is expected to return any information it identifies for disclosure to the Requesting Participant, along with a request for any information it identifies for disclosure by the Requesting Participant.

9) Section 2.15 is revised to read:

2.15 For each matching case, the Requesting Participant is expected to return to the Providing Participant the equivalent data, set out in paragraph 2.11, from its own system, to the extent that the data is available within its relevant biometric system and it is lawful for the data to be disclosed.

10) Section 2.16 is revised to read:

2.16 Either Participant may subsequently request in writing further data on matching cases from the other Participant, and is to provide sufficient reasons for such requests to enable the other Participant to determine whether such further information may be disclosed. The written request also is expected to set out the data elements requested and the name of the requestor. Subject to the provisions of section 4 below, each Participant is to endeavor to provide information requested by the other in a timely manner.

11) Section 4.1 is revised to read:

4.1 The Participants may exchange, using the SFSS or SRTP, relevant information on matching cases further to that set out in paragraph 2.11, which may include, but is not limited to:

- i. Immigration history and immigration status;
- ii. Details of known or suspected immigration abuse and offences, including overstays of authorised presence in a country, or people smuggling;
- iii. Criminality and other information that is pertinent to immigration and nationality purposes;
- iv. Copies of travel documents or other identity documents; and
- v. Such other information as the Participants may mutually consider appropriate.

12) Section 4.5 is added to read:

4.5 While it is the intent to share as much data as possible, it is clearly understood that a Participant is only permitted to provide data deemed shareable under its domestic law, policy or protocol. The Participants understand that the limitations posed by these restrictions may result in biometric queries matching against non-shareable data and result in a "no match" response. Similarly, the Participants understand that "match" responses do not necessarily result in the Participant's ability to provide the full details that are available on the data subject due to limitations posed by laws, policies, protocol and data owner restrictions.

13) Section 6.1 is revised to read:

6.1 Each Participant is expected to apply at a minimum the standards set out herein with respect to the handling and safeguarding of the information received. Each is expected to protect any personal identifying information received in a secure manner in accordance with that Participant's domestic law and policy.

14) Section 6.2A is added to read:

6.2A The SRTP handles data exchange securely between the gateways. In either case, processes, formats and media for data exchange are to conform to the Interface Control Agreement (ICA) and the Interconnection Security Agreement (ISA).

15) Section 6.3 is no longer applicable as security restrictions within DIAC do not allow for transfer for encrypted attachments via e-mail.

16) Section 6.4 is revised to read:

Contingency for data transfer

6.4 In the event that neither the SRTP nor the SFSS link is available, but one of the Participants urgently seeks information, that Participant may make arrangements for one of its designated officials to deliver the information by hand to the other Participant's Embassy/High Commission. The information may then be transmitted between the relevant Participant's Embassy/High Commission and home government within its secure e-mail network.

17) Section 6.8A is added to read:

6.8A Records Management on the SRTP: Once checked for match/no match, it is expected that information will automatically be deleted by the Providing Participant's system.

18) Section 6.14 is revised to read:

Subject to paragraphs 2.12 and 6.8A, each Participant is expected to dispose of any other information accessed under this Memorandum of Understanding in accordance with its own records retention authorities and policies, as well as applicable laws and regulations. In particular:

- i. Data subject case file. Personal information which is retained on an electronic or paper case file relating to the data subject, because it has ongoing relevance to that file, may be retained as part of that file in accordance with the domestic laws and data retention policies of the Participant that has received it.

s. 37(2)(b), s. 47E(d)

- iii. Data held by central Protocol team. Personal information which is otherwise retained, in a central record of information received or otherwise, may be retained for no longer than 2 years from the date of receipt.

Any further retention is subject to the prior written approval of the Participant that supplied the information.

19) Section 6.15 is revised to read:

To provide further safeguards for the privacy, security, confidentiality, integrity and availability of the information systems and the information they store, process and transmit, and in addition to the safeguards set out in the SFSS Service Arrangement described in paragraph 2.2, the Participants are expected to provide notice to each other of the following specific events:

- i. By immediately notifying the other Participant by telephone or e-mail in the event of a disaster or other situation that disrupts the intended transfer of information between them;
- ii. By notifying the other Participant in writing immediately as appropriate after becoming aware of any breach of the security of the information systems containing, or unauthorized use or disclosure of, any personal information shared under this MOU. Where there is a significant risk of damage to individuals and/or the integrity of the other provider's program, notification may:
 - o Include appropriate restrictions as to the further transmission of the notification, or
 - o Be delayed or omitted when to do so may endanger national security.

20) Section 7.1 is revised to read:

7.1 The Participants are to jointly prepare a report of the types of transactions, the outcomes and the timeliness of the matching activity based on mutually decided performance and management measurements. The joint report is to include, but not be limited to, the number and severity of any security/privacy breaches of the SFSS or SRTP, as applicable or personal information shared under this MOU as well as a summary of remedial actions taken.

END OF ADDENDUM

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**Memorandum of Understanding
between
The Australian Department of Immigration and Citizenship
and
The United States Department of Homeland Security and the United States
Department of State
for the purposes of
Implementation of the High Value Data Sharing Protocol between the Nations of
the Five Country Conference**

The Department of Immigration and Citizenship (DIAC) as the Australian Participant, and the United States (U.S.) Department of Homeland Security and the U.S. Department of State as the U.S. Participant (hereafter referred to collectively as "the Participants"),

HAVING REGARD FOR the long-standing co-operative relationship between the immigration authorities in Australia and the United States of America;

CONSIDERING the increasing global patterns of both regular and irregular migration, and that the compelling need to welcome genuine migrants, while tackling identity fraud and abuse of our countries' immigration laws, is important to maintaining the prosperity and security of our respective societies;

RECOGNISING that Australia, Canada, New Zealand, the United Kingdom and the United States of America, as the countries of the Five Country Conference (FCC), have committed to develop the High Value Data Sharing Protocol ("the Protocol") whose operations would be set out in bilateral arrangements such as this Memorandum of Understanding ("MOU");

CONFIRMING that this arrangement is intended to facilitate the matching of immigration and nationality cases against each others' biometric databases, and to exchange relevant information on cases where biometric matches are made, for the collective benefit of the Participants;

Have mutually decided as follows:

1 PURPOSE

1.1 This MOU is intended to enable the exchange of data between the Participants for immigration and nationality purposes in order to assist the Participants in the maintenance of fair and effective immigration controls. As part of the FCC effort to improve immigration controls, the FCC partner countries have undertaken biometric matching trials. Those trials showed the potential value of biometric data exchange to help establish the identities, and confirm or deny the claims, of migrants to FCC partner countries, and to assist processing and removal of those who remain illegally in, or are due to be removed from, one of the FCC partner countries.

1.2 Obtaining information from another FCC country is an important component of maintaining fair and effective immigration controls and, for the Participants to this MOU, is in the substantial public interest.

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1.3 In the context of this MOU, immigration and nationality purposes are the consideration, regulation and enforcement of whether, and on what basis, any person may enter or remain in the territory of one of the Participants.

1.4 Nothing in this MOU, including its discontinuation, if applicable, is intended to affect the sharing of information between the Participants under other established arrangements, or any other Agreement or Arrangement.

1.5 All work under this MOU is to be carried out in accordance with all relevant provisions of the Participants' laws and their international obligations.

2 PROCEDURES FOR THE EXCHANGE OF INFORMATION

General

2.1 In respect of any case handled under this MOU, the Participant which supplies the fingerprints for matching is known as the "Requesting Participant" whilst the Participant which searches the fingerprints against its systems is known as the "Providing Participant".

2.2 Data exchange under this MOU is expected to be conducted securely between designated points of contact, through the FCC Secure File Sharing Server ("SFSS") which is to be hosted by the Government of Australia. The arrangements for management of the SFSS are set out in a separate Service Arrangement among countries participating in the Protocol and the Government of Australia. Notwithstanding any discontinuance or suspension of activities under the Protocol in accordance with paragraphs 6.19 or 11.2 of this MOU, the Participants expect that the Government of Australia will continue to host the SFSS in accordance with the Service Arrangement. In the event that the Government of Australia is unable to continue to host the SFSS, the Participants expect that it will give written notice of not less than 90 days to the other countries participating in the Protocol.

2.3 The countries participating in the FCC Protocol intend to maintain a mutually decided Search Code Guide, which sets out search codes to be attached to different types of cases that are to be matched, and aids understanding of which information is desirable and appropriate to exchange in different circumstances.

Fingerprint matching requests

2.4 [REDACTED] s. 37(2)(b), s. 47E(d)

[REDACTED] Each Participant may provide whichever cases it considers will provide high value from the exchange, which are likely to include, but not be limited to:

- Immigration cases where identity of the individual is unknown or uncertain;
- Immigration cases where the individual's whereabouts are unknown; and/or
- Immigration cases where there is reason to suspect that the person has been encountered by one of the countries participating in the Protocol.

2.5 [REDACTED] s. 37(2)(b), s. 47E(d)

2.6 The Participants intend to ensure that the fingerprints exchanged for searching under this MOU do **not** contain fingerprint data of known FCC nationals.

s. 37(2)(b), s. 47E(d)

Fingerprint matching and response

2.9 Upon notification from the SFSS of the request, the Providing Participant is to then search the fingerprints against its relevant biometric systems.

2.10 The relevant biometric systems, in the first instance, in the case of Australia is the DIAC s. 37(2)(b), s. 47E(d) and in the case of the US is the DHS Automated Biometric Identification System (IDENT). The Participants may decide in writing to extend some or all of the searches to additional relevant systems to the extent authorized by applicable law and policy.

s. 37(2)(b), s. 47E(d)

2.12 The Providing Participant is expected to destroy the fingerprints provided by the Requesting Participant in a secure manner consistent with the Providing Participant's domestic law and policy, and use them for no other purpose once the search against its relevant biometric systems is complete.

Further information exchange

2.13 In order to facilitate efficient and proportionate exchange of relevant information, the Participants, in cooperation with the other countries participating in the FCC Protocol, have established a Search Code Guide which sets out the data elements that may be routinely provided when a match occurs, according to the search code given by the Requesting Participant and the nature of the information held by the Providing Participant.

2.14 For each matching case, the Providing Participant intends to review its records of the data subject and, in accordance with the Search Code Guide and the provisions of section 4 of this MOU, determine what further information is available to provide to the

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other Participant, consistent with its relevant domestic law and policy. The Providing Participant is expected to place any information it identifies for disclosure to the Requesting Participant onto the SFSS, along with a request for any information it identifies for disclosure by the Requesting Participant.

2.15 For each matching case, the Requesting Participant is expected to place onto the SFSS the equivalent data set out in paragraph 2.11 from its own system, to the extent that the data is available within its relevant biometric system and it is lawful for the data to be disclosed.

2.16 Either Participant may subsequently request in writing further data on matching cases from the other Participant, and is to provide sufficient reasons for such requests to enable the other Participant to determine the legality of disclosing such further information. The written request also is expected to set out the data elements requested and the name of the requestor. Subject to the provisions of section 4 below, each Participant is to endeavor to provide information requested by the other in a timely manner using the SFSS.

3. DESIGNATION OF OFFICIALS

3.1 Each Participant is expected to designate officials in the responsible organization who are authorized to exchange information under this MOU, and to keep the other Participant informed in writing or by e-mail of any such designations or changes. All fingerprint matching requests, and information provided in response thereto, made under this MOU are to be communicated between these designated officials as central contact points for information exchange between the Participants.

3.2 The officials designated under paragraph 3.1 are to work within each Participant's central team which administers the Protocol and has responsibility for that Participant's operation of the Protocol.

3.3 Each Participant is specifically expected to designate a Protocol Manager under paragraph 3.1 who is to be responsible for ensuring that Participant's implementation of the provisions of this MOU.

4. INFORMATION WHICH MAY BE EXCHANGED

4.1 The Participants may exchange, using the SFSS, relevant information on matching cases further to that set out in paragraph 2.11, which may include, but is not limited to:

- i. Immigration history and immigration status;
- ii. Details of known or suspected immigration abuse and offences, including overstay of authorised presence in a country, or people smuggling;
- iii. Criminality and other information that is pertinent to immigration and nationality purposes;
- iv. Copies of travel documents or other identity documents; and
- v. Such other information as the Participants may mutually consider appropriate.

4.2 Information may be exchanged under this MOU only to the extent that is relevant, necessary, and proportionate to the immigration and nationality purposes of the Participants, and is permitted by the Participants' domestic laws and international obligations.

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4.3 Participants are expected to exchange information only to the extent that the information is available to them and the disclosure is practicable.

4.4 It is clearly understood that a Participant is not at liberty to exchange information, wherever use or transfer of that information is restricted by law, policy or protocol, or is subject to another's consent (whether the consent of the data subject, or of another authority or person). The usefulness of the information exchanged, and the limitations thereon, are to be subject to ongoing review and constructive discussion between the countries participating in the FCC Protocol.

s. 47E(d), s. 37(2)(b)

s. 47E(d), s. 37(2)(b)

Limitations on use and disclosure

5.6 Disclosure or use of the information received under this MOU for any purpose or to any person other than as set out in paragraphs 5.1 to 5.5 is to be subject to the prior written approval of the Participant that supplied the information.

5.7 Any use or disclosure of information received under this MOU is expected to comply with the receiving Participant's applicable domestic laws and international obligations.

5.8 Specifically, neither Participant is to exchange, use or disclose information in any way pursuant to this MOU such that the information could become known to any government, authority or person from which the subject of the information is seeking or has been granted protection under the 1951 Convention Relating to the Status of Refugees, its 1967 Protocol, the Convention Against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, or under either Participant's domestic laws implementing the relevant Conventions or Protocol. Nor is a Participant to exchange, use or disclose information to a government, authority or person, in circumstances where, by virtue of the government, authority or person becoming aware of such information, the subject of the information may become eligible for such protection.

5.9 In any particular case, a Participant may, by way of protective marking or otherwise, apply additional restrictions in respect of the use or disclosure of information which it has provided under this MOU, including to ensure that treatment of the information is consistent with its applicable domestic policies, laws and international obligations. Where this is done, the other Participant is expected to comply with the restrictions. Such restrictions may not preclude subject access as provided for by paragraph 5.5.

5.10 This MOU is not intended to preclude the use or disclosure of information to the extent that there is an obligation to do so under the laws of the receiving Participant. To the extent practicable, a Participant is to notify the other in advance of any use or disclosure of information received under this MOU which is not otherwise consistent with the terms of the MOU. This is intended to provide Participants with the opportunity, where appropriate, to seek the non-disclosure or other protection of the information, to the extent permitted by the law of the receiving Participant.

5.11 Special Procedures for certain uses of U.S. visa data. In the event that DIAC wishes to disclose U.S. visa data to the data subject, or to a court, including any administrative tribunal, DIAC intends to first seek written permission from the U.S. Department of State.

6. INFORMATION TRANSFER AND SECURITY

6.1 Each Participant is expected to apply at a minimum the standards set out herein with respect to the handling and safeguarding of the information received. In particular, each is expected to maintain any personal identifying information received in a manner at

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least as secure and with similar privacy and data protections and privileges being afforded to the data subject as is the case with its own citizens.

Secure File Share Server

6.2 Other than in the contingencies set out in paragraphs 6.3 and 6.4, all data exchange under this MOU should be conducted securely between designated officials, through the FCC Secure File Share Server which is to be hosted by the Government of Australia. Processes, formats and media for data exchange are to conform wherever applicable to the FCC Data Format Standard and such other standards and processes as may be mutually decided by the countries participating in the FCC Protocol.

Contingencies for data transfer

6.3 In the event that the SFSS is unavailable, information may be transmitted between the Participants via direct country-to-country e-mail transfer, which will be encrypted using an Advanced Encryption Standard (AES) 256 bit key.

6.4 In the unlikely event that the SFSS and encrypted e-mail are both unavailable, but either Participant urgently seeks information, that Participant may make arrangements for one of its designated officials to deliver the information by hand to the other Participant's Embassy. The information may then be transmitted between the relevant Participant's Embassy and home government within its secure e-mail network.

Data security

6.5 Classification. Personal information received by Australia under this MOU is to be classed as "In-Confidence", and information received by the U.S. under this MOU is to be classed as "For Official Use Only", unless the Participant that supplied the information requests otherwise.

6.6 Identification, Authentication, and Access Controls. Each Participant is expected to limit access to the information received under this MOU to those authorized personnel who have a need to know the information to carry out their official duties, for uses which are consistent with the purposes of this MOU. Each Participant is to enforce strong authentication measures to ensure that access to information received under this MOU is so limited.

6.7 Dissemination Controls. Each Participant is expected to ensure that information received under this MOU is protected from unauthorized dissemination.

6.8 Records Management on the SFSS. The Participant retrieving the information from the SFSS is expected to delete that information from the SFSS upon successful retrieval.

6.9 Records Storage. Personal and official information is to be protected by administrative, technical, and physical safeguards appropriate to the sensitivity of the information. The Participants are expected at all times to store information obtained under this MOU in secure electronic and/or paper storage systems.

6.10 Personnel Training for Permitted Uses. All persons who have access to data received under this MOU are expected to have been appropriately educated and trained regarding the handling and restrictions on use of this information to ensure the overall safeguarding of the information and compliance with this MOU.

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Integrity of Information

6.11 Information provided and received under this MOU should be accurate, complete, and up to date to the maximum extent practicable for the purposes of this MOU. A Participant may not modify any information received under this MOU without the authorization of the Participant that provided it.

6.12 If either Participant becomes aware that information it provided or received under this MOU is inaccurate, that Participant is to advise the other Participant thereof and provide correct information.

6.13 Participants are expected in a timely manner to take appropriate action with regard to any request made by the other Participant for access, additions, changes, deletions, or corrections to information provided.

Retention of Information

6.14 Subject to paragraph 2.12, each Participant is expected to assess the continued relevance of the information received under this MOU to its immigration and nationality purposes, and to destroy the information securely when it is no longer relevant. In particular:

- i. Data subject case file. Personal information which is retained on an electronic or paper case file relating to the data subject, because it has ongoing relevance to that file, may be retained as part of that file in accordance with the domestic laws and data retention policies of the Participant that has received it.
- ii. Lookouts and Alert Lists. Personal information relating to:
 - a. false identities and travel documents;
 - b. multiple identities used by the same person; and
 - c. persons engaged in derogatory activity that would render them inadmissible to the territory of the Participant that has received it;may also be retained for as long as it is relevant to that Participant's border controls, up to an initial maximum of ten years from the date of receipt. As part of their ongoing review of lookout and alert list entries, the Participants intend to discuss the continued relevance of the information and seek approval before ten years on information appropriate for retention for a further period.
- iii. Data held by central Protocol team. Personal information which is otherwise retained, in a central record of information received or otherwise, may be retained for no longer than two years from the date of receipt.

Any further retention is expected to be subject to the prior written approval of the Participant that supplied the information.

Notifications and remedies

6.15 To provide further safeguards for the privacy, security, confidentiality, integrity and availability of the information systems and the information they store, process and transmit, and in addition to the safeguards set out in the SFSS Service Arrangement described in paragraph 2.2, the Participants are expected to provide notice to each other of the following specific events:

- i. By immediately notifying the other Participant by telephone or e-mail in the event of a disaster or other situation that disrupts the intended transfer of information between them;

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- ii. By notifying the other Participant in writing as soon as reasonably practicable, but no later than 24 hours after becoming aware of any breach of the security of the information systems containing, or unauthorized use or disclosure of, any personal information shared under this MOU.

6.16 Prevention of Misuse. The Participants are expected to take appropriate action under their administrative, civil, and/or criminal laws in the event of misuse, unauthorized alteration, or deletion of, or unauthorized access to or dissemination of information obtained under this MOU by its own employees, agents or any third party.

Recording of transactions

6.17 The Participants are expected each to maintain records of information provided and received under this MOU, whether or not they also keep additional records in accordance with their applicable domestic laws and record retention policies and guidance.

Compliance and Audit

6.18 Either Participant may request assurance from the other that sufficient safeguards are being maintained with regard to the information received under this MOU, which may include requesting an audit of the safeguards. A Participant from which an audit is requested may arrange for this to be carried out by an appropriate internal or external auditor, with terms of reference that are expected to be mutually determined by the Participants.

6.19 The Participants should endeavor to address any perceived deficiencies in safeguards under paragraph 6.18 of this MOU. However, if a situation arises whereby a Participant considers it necessary to decline to provide further information pending a resolution of the issue, it is to provide written notice to the other Participant, and also to notify the other countries participating in the FCC Protocol. Such notification is to be the subject of immediate consultation between the countries participating in the FCC Protocol to decide upon the appropriate course of action.

7. PERFORMANCE AND MANAGEMENT REPORTING

7.1 The Participants are to jointly prepare a report of the types of transactions, the outcomes and the timeliness of the matching activity based on mutually decided performance and management measurements. The joint report is to include, but not be limited to, the number and severity of any security/privacy breaches of the SFSS or personal information shared under this MOU as well as a summary of remedial actions taken.

8. MODIFICATION AND CONSULTATION

8.1 The Participants intend to inform each other of any changes to their respective laws, policies or international obligations that could materially affect the operation or interpretation of this MOU.

8.2 The Participants may modify this MOU from time to time, as mutually decided in writing by their Protocol Managers, and otherwise make changes to its operation as provided for by its specific terms, provided that such modification and changes are consistent with the original nature and scope of the MOU and with the effective operation

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of the FCC Protocol. Before making such modification or changes, the Participants should notify each of the other countries participating in the Protocol, in order to ensure effective understanding and operation of the Protocol is maintained.

GENERAL PROVISIONS

9.1 This MOU embodies the understanding of the Participants. It is not intended to create legally binding obligations, nor to create or confer any right, privilege or benefit on any person or party, private or public.

9.2. Any differences between the Participants arising out of the interpretation, implementation or application of any aspect of this arrangement may be resolved by mutual consultation without reference to any third party or international tribunal.

9.3 Nothing in this MOU is to be considered to prevent either Participant from co-operating or granting assistance in accordance with the provisions of other applicable international treaties and agreements, other arrangements, national laws and related practices.

FINANCING

10.1 The Participants are to bear their own costs and use their own equipment and personnel resources in performing their activities under this MOU.

COMMENCEMENT AND DISCONTINUANCE

11.1 Co-operation under this MOU may commence from the date that the MOU is signed by all Participants, and is to continue indefinitely unless suspended under paragraph 11.2

11.2 Other than as provided for under paragraph 6.19 of this MOU, participation in this MOU is expected to continue whilst both Participants continue to participate in the FCC Protocol. In the event that either Participant wishes to suspend its activities under the Protocol, it is expected to provide 60-day written notice to each of the other countries participating in the Protocol. Such notification should be the subject of immediate consultation by the countries participating in the Protocol to decide upon the appropriate course of action to effect suspension of that country's activities on the most economical and equitable terms. Suspension of a Participant's activities under the Protocol should be represented by suspension of activities under this MOU and under the similar arrangements which that country has with the other countries participating in the Protocol. Each Participant is to pay the costs it incurs as a result of suspension of activities under the arrangements for the Protocol.

11.3 The Participants reconfirm their intent to work and share data with all countries participating in the FCC Protocol, as set forth in this MOU and the similar arrangements with the other partner countries. Excepting such unlikely circumstances as are specified and need resolution under paragraph 6.19 of this MOU, each Participant intends faithfully to continue this co-operation fully with all of the countries participating in the Protocol, for as long as the Protocol is in operation and each country remains a participant in the Protocol.

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FOR THE AUSTRALIAN DEPARTMENT OF IMMIGRATION AND CITIZENSHIP

s. 22(1)(a)(ii)

Date 10 December 2009

Andrew Metcalfe, Secretary

FOR THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY

s. 47F(1)

Date 25 January 2010

David Heyman, Assistant Secretary for Policy

FOR THE UNITED STATES DEPARTMENT OF STATE

s. 47F(1)

Date January 8, 2010

s. 47F(1)
Affairs

Assistant Secretary for Consular