



**U.S. Immigration
and Customs
Enforcement**

MEMORANDUM FOR: Ellen McClain
Assistant General Counsel (Enforcement)
Office of the General Counsel
Department of Homeland Security

THROUGH: Susan M. Cullen
Director, ICE Policy

FROM: Sarah B. Dorsey
Senior Policy Advisor

SUBJECT: Implementation of DOJ Final Rule "DNA-Sample Collection and
Biological Evidence Preservation in the Federal Jurisdiction"

Purpose

To respond to the Secretary's request that U.S. Immigration and Customs Enforcement (ICE) provide an implementation plan for the Department of Justice's (DOJ) Final Rule on DNA-Sample Collection and Biological Evidence Preservation in the Federal Jurisdiction.¹

Background

On December 10, 2008, DOJ published a final rule amending regulations on DNA-sample collection. Under this rule, effective January 9, 2009, all federal law enforcement agencies are required to take DNA samples from "individuals who are arrested, facing charges, or convicted, and from non-United States persons² who are detained under the authority of the United States."³ On January 12, 2009, then Deputy Secretary of the Department of Homeland Security (DHS), Paul A. Schneider, wrote to the Attorney General that DHS's implementation of the rule was not feasible due to resource limitations and operational exigencies.

¹ DNA-Sample Collection and Biological Evidence Preservation in the Federal Jurisdiction, 73 Fed. Reg. 74932 (Dec. 10, 2008).

² The term "non-U.S. persons" includes "persons who are not United States citizens and who are not lawfully admitted for permanent residence as defined in 8 CFR 1.1(p)." 28 CFR § 28.12(b).

³ 28 CFR § 28.12(b).

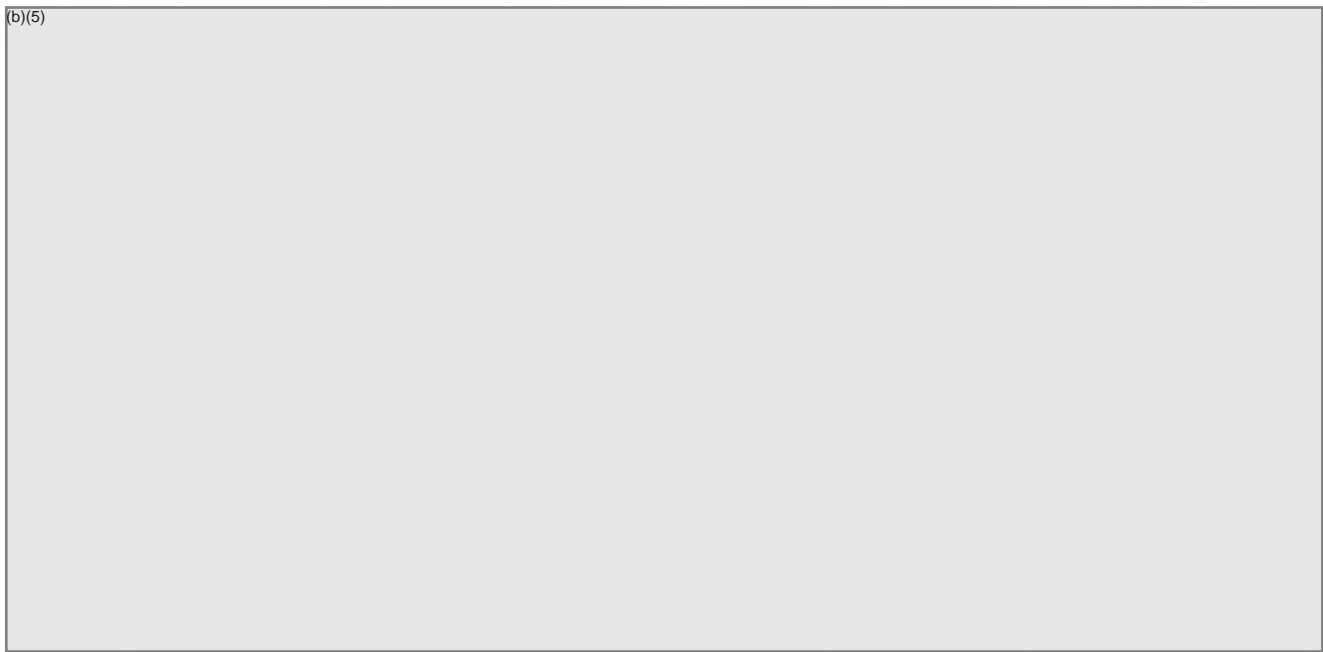
On March 25, 2009, Secretary Napolitano directed each DHS Operational Component to create an implementation plan to ensure compliance with the DNA sample collection obligations. ICE coordinated discussions among its Office of Policy, Office of the Principal Legal Advisor (OPLA), Office of Investigations (OI), Federal Protective Service (FPS), Office of Privacy, and Office of Detention and Removal Operations (DRO) on how to implement this regulation. This memorandum, in conjunction with discussions with DHS OGC and other DHS components and offices, responds to the Secretary's direction to submit an implementation plan.

Discussion

This discussion tracks the enumerated topics requested by the Secretary in her memorandum.

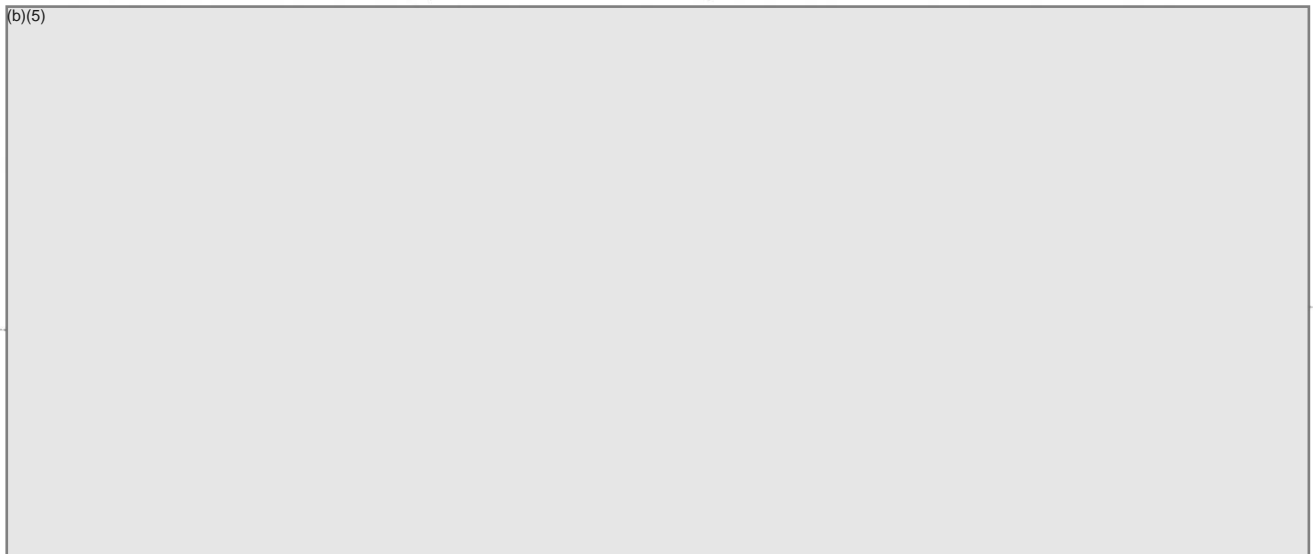
1. Timetable for Implementation

(b)(5)



2. Cost Estimates

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3. Training

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4. Interagency Agreements

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5. Exemptions

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