

Office of Policy

U.S. Department of Homeland Security
500 12th St. SW
Washington, DC 20536



**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).

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program and its costs, it is premature to conclusively determine “operational exigencies or resource limitations.” However, three possible exemptions are discussed below.

CC: Beth Gibson

Attachment
