

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) constitutes an agreement between the United States Department of Homeland Security (DHS) and the San Bernardino County (California) Board of Supervisors under which U.S. Immigration and Customs Enforcement (ICE) authorizes nominated, trained and certified personnel of the San Bernardino County Sheriff's Department (SBSD) to perform certain immigration enforcement functions as specified herein. The SBSBD represents San Bernardino County in the implementation and administration of this MOU. It is the intent of the parties that this agreement will result in enhanced capacity to deal with immigration violators in San Bernardino County jail facilities.

I. PURPOSE

The purpose of this MOU is to set forth the terms and conditions for this agreement to authorize selected SBSBD personnel (participating SBSBD personnel) to perform certain functions of an immigration officer within San Bernardino County jail facilities, and how those participating SBSBD personnel will be nominated, trained, authorized, and supervised in performing the immigration enforcement functions specified under this MOU.

Nothing herein shall otherwise limit the jurisdiction and powers normally possessed by participating SBSBD personnel as members of the SBSBD. However, the exercise of the immigration enforcement authority granted under this MOU to participating SBSBD personnel shall occur only as provided in this MOU and shall be ~~limited to activities at San Bernardino County jail facilities.~~

II. AUTHORITY

Section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g), as amended by the Homeland Security Act of 2002, Public Law 107-276, authorizes the Secretary of the Department of Homeland Security, acting through the Under Secretary for Border and Transportation Security, to enter into written agreements with a State or any political subdivision of a State so that qualified personnel can perform certain functions of an immigration officer. This MOU constitutes such a written agreement.

III. POLICY

This MOU sets forth the scope of the immigration officer functions that DHS is authorizing the participating SBSBD personnel to perform. It sets forth with specificity the duration of the authority conveyed and the specific lines of authority, including the requirement that participating SBSBD personnel be subject to ICE supervision while performing immigration-related duties pursuant to this MOU. For the purposes of this MOU, ICE officers will provide supervision for participating SBSBD personnel only as to

immigration enforcement functions. SBSB retains supervision of all other aspects of the employment of and performance of duties by participating SBSB personnel.

Before participating SBSB personnel will be authorized to perform immigration officer functions granted under this MOU, they must successfully complete mandatory training in the enforcement of federal immigration laws and policies as provided by DHS instructors and pass examinations equivalent to those given to ICE officers. This MOU further sets forth requirements for regular review of this agreement. Only participating SBSB personnel who are selected, trained, authorized and supervised as set out herein have authority pursuant to this MOU to conduct the immigration officer functions enumerated in this MOU.

SBSB may, at its discretion, communicate the intent, focus, and purpose of this agreement to organizations and groups expressing an interest in the law enforcement activities to be engaged in under this MOU. This MOU also describes the complaint procedures available to members of the public regarding actions taken by participating SBSB personnel pursuant to this agreement.

IV. DESIGNATION OF FUNCTIONS

For the purposes of this MOU, the functions that may be performed by participating SBSB personnel are indicated below with their associated authorities:

AUTHORITY	FUNCTIONS
<ul style="list-style-type: none"> The power to interrogate any alien or person believed to be an alien as to his right to be or remain in the United States. INA § 287(a)(1) and 8 C.F.R. § 287.5(a)(1). 	<ul style="list-style-type: none"> Interrogation in order to determine probable cause for an immigration violation.
<ul style="list-style-type: none"> The power and authority to administer oaths and to take and consider evidence. INA § 287(b) and 8 C.F.R. § 287.5(a)(2). 	<ul style="list-style-type: none"> Completion of required criminal alien processing, to include fingerprinting, photographing, and interviewing, as well as preparation of affidavits and the taking of sworn statements for ICE supervisor review <p>Preparation of a Notice to Appear (NTA) application for signature of ICE officer for aliens in categories established by ICE supervisors.</p>

<ul style="list-style-type: none"> • The power to issue detainers. 8 C.F.R. § 287.7. • Transportation of allens. 8 C.F.R. § 387.5(c)(6) 	<ul style="list-style-type: none"> • Preparation of immigration detainers for aliens in categories established by ICE supervisors.
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In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating SBSB personnel in exercising these authorities shall be DHS policies and procedures, including the ICE Use of Force Policy. However, when engaged in immigration enforcement activities, no participating SBSB personnel will be expected or required to violate or otherwise fail to maintain SBSB standards of conduct, or be required to fail to abide by restrictions or limitations as may otherwise be imposed by law, or SBSB rules, standards, or policies.

The parties understand that SBSB will not continue to detain an alien after that alien is eligible for release from SBSB custody in accordance with applicable law and SBSB policy, except for a period of up to 48-hours, excluding Saturday, Sunday and any holiday, pursuant to a DHS detainer issued in accordance with 8 C.F.R. § 287.7.

V. NOMINATION OF PERSONNEL

~~The Sheriff of San Bernardino County will nominate to ICE candidates for initial training and certification under this MOU. For each candidate, ICE may request any information necessary for a background check and evaluation for suitability to~~
 participate in the enforcement of immigration authorities under this MOU. All candidates must be United States citizens. All candidates will have at least two years correctional work experience for SBSB. All candidates must be approved by ICE and must be able to qualify for appropriate federal security clearances. Should a candidate not be approved, a substitute candidate may be submitted, so long as such substitution happens in a timely manner and does not delay the start of training. Any future expansion in the number of participating SBSB personnel or scheduling of additional training classes may be based on an oral agreement of the parties, but will be subject to all the requirements of this MOU.

VI. TRAINING OF PERSONNEL

ICE will provide appropriate training of nominated SBSB personnel tailored to the designated immigration functions and types of cases typically encountered by SBSB correctional personnel at a mutually designated site in San Bernardino County, utilizing ICE-designed curriculum and competency testing. Training will include presentations on this agreement, elements of this MOU, scope of immigration officer authority, cross-cultural issues, the ICE Use of Force Policy, civil rights law, the U.S. Department of

Justice "Guidance Regarding the Use Of Race By Federal Law Enforcement Agencies" dated June 2003, public outreach and complaint procedures, liability and other relevant issues. ICE will provide the instructors and training materials. SBSB is responsible for the salaries and benefits, including overtime, for any of its personnel being trained or performing duties under this MOU. SBSB will cover the costs of all candidates' travel, housing and per diem while involved in training required for participation in this agreement.

All nominated personnel will receive specific training regarding their obligations under federal law and the Vienna Convention on Consular Relations to make proper notification upon the arrest or detention of a foreign national.

Approximately one year after the participating SBSB personnel are trained and certified, ICE may provide certified personnel with additional updated training on relevant administrative, legal and operational issues related to the performance of immigration officer functions, unless either party terminates this MOU pursuant to Section XVII, below. Local training on relevant issues will be provided on an ongoing basis by ICE supervisors or designated team leader.

VII. CERTIFICATION AND AUTHORIZATION

The ICE Training Division will certify in writing to the ICE Special Agent in Charge in Los Angeles the names of those SBSB personnel who successfully complete training and pass all required testing. Upon receipt of Training Division certification, the Special Agent in Charge will provide to the participating SBSB personnel a signed authorization to perform specified functions of an immigration officer for an initial period of one year ~~from the date of the authorization. ICE will also provide a copy of the authorization to SBSB. The activities of all personnel certified under this MOU will be evaluated by the ICE supervisory officer or designated team leader as addressed in Section IX, below.~~

Authorization of any participating SBSB personnel to act pursuant to this MOU may be revoked at any time by ICE or SBSB. Such revocation will require immediate notification of the other party to this MOU. The San Bernardino County Sheriff and the ICE Special Agent in Charge in Los Angeles will be responsible for notification of the appropriate personnel in their respective agencies. If any participating SBSB personnel are the subject of a complaint of any sort that may result in that individual receiving employer discipline or becoming the subject of a criminal investigation, SBSB shall, to the extent allowed by state law, immediately notify ICE of the complaint. The resolution of the complaint shall be promptly reported to ICE. Complaints regarding exercise of immigration enforcement authority by any participating personnel shall be handled in accordance with Section XII, below. The termination of this MOU shall constitute revocation of all immigration enforcement authorizations conveyed hereunder.

VIII. COSTS AND EXPENDITURES

Participating SBSB personnel will carry out designated functions at SBSB expense, including salaries and benefits, local transportation, and official issue material. ICE will provide training personnel, training materials and supervision.

IX. ICE SUPERVISION

Immigration enforcement activities of the participating SBSB personnel will be supervised and directed by ICE supervisory officers or designated team leader in San Bernardino. Participating SBSB personnel cannot perform any immigration officer functions pursuant to the SBSB authorities herein except when working under the supervision of an ICE officer. Participating SBSB personnel shall give timely notice to the ICE supervisory officer of any alien for whom the individual believes ICE arrest or detainer is appropriate to facilitate ICE action prior to any release from SBSB custody. The actions of participating SBSB personnel will be reviewed by the ICE supervisory officers on an ongoing basis to ensure compliance with the requirements of the immigration laws and procedures and to assess the need for additional training or guidance for that specific individual.

For the purposes of this MOU, ICE officers will provide supervision of participating SBSB personnel only as to immigration enforcement functions. SBSB retains supervision of all other aspects of the employment of and performance of duties by participating SBSB personnel.

~~If a conflict arises between an order or direction provided by the ICE supervisory officer and SBSB rules, standards, or policies, the conflict shall be promptly reported to the Special Agent in Charge or designee and the San Bernardino County Sheriff or designee when circumstances safely allow the concern to be raised. The Special Agent in Charge and the San Bernardino County Sheriff shall attempt to resolve the conflict.~~

X. LIABILITY AND RESPONSIBILITY

ICE and SBSB understand and agree that except as otherwise noted in this MOU or allowed by federal law, they will be responsible for their own liability and bear their own costs with regard to their property and resources, or personnel expenses incurred by reason of death, injury or incidents giving rise to liability.

Participating SBSB personnel shall not be treated as federal employees except for purposes of the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, and worker's compensation claims, 5 U.S.C. § 8101 *et seq.*, when performing a function as authorized by this MOU. 8 U.S.C. § 1357(g)(7). It is the understanding of the parties to this MOU that participating SBSB personnel will have the same immunities and defenses as do ICE officers from personal liability from tort suits based on actions conducted in compliance with this MOU. 8 U.S.C. § 1357(g)(8). ICE will not be

responsible for any intentional misconduct on the part of any participating SBSB personnel.

Participating SBSB personnel who are named as defendants in litigation arising from activities carried out under this MOU may request representation by the U.S. Department of Justice. Such requests must be made in writing directed to the Attorney General of the United States, and be presented to the ICE Special Agent in Charge in Los Angeles. The Special Agent in Charge will forward the individual's request, together with a memorandum outlining the factual basis underlying the event(s) at issue in the lawsuit to the ICE office of the Principal Legal Advisor, which will forward the request, the factual memorandum, and a statement of the views of ICE with respect to whether such representation would be in the interest of the United States to the Director of the Constitutional and Specialized Torts Staff of the Civil Division of the Department of Justice.

SBSB agrees to cooperate with any federal investigation related to this MOU to the full extent of its available powers. It is understood that information provided by any SBSB personnel under threat of disciplinary action in an administrative investigation cannot be used against that individual in subsequent criminal proceedings, consistent with *Garrity v. New Jersey*, 385 U.S. 493 (1967).

The *Giglio* decision (405 U.S. 150 (1972)) relates to disclosure of potential impeachment information about potential witnesses or affiants in a criminal case or investigation. As the activities of participating SBSB personnel under this MOU are undertaken under federal authority, the participating personnel will comply with federal standards and guidelines relating to such cases.

XI. CIVIL RIGHTS STANDARDS AND PROVISION OF INTERPRETATION SERVICES

Pursuant to this MOU, participating SBSB personnel will perform certain federal immigration enforcement functions. In doing so, these participating personnel are bound by all federal civil rights statutes and regulations, including the U.S. Department of Justice "Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies" dated June 2003.

Participating SBSB personnel will provide an opportunity for subjects with limited English language proficiency to request an interpreter. Qualified foreign language interpreters will be provided by the SBSB as needed.

XII. COMPLAINT PROCEDURES

The complaint reporting and resolution procedure for allegations of misconduct by participating SBSB personnel designated, or activities undertaken, under the authority of this MOU is included at Appendix B.

XIII. REQUIRED REVIEW OF ACTIVITIES

The ICE Assistant Secretary and the San Bernardino County Sheriff shall establish a steering committee that will meet periodically to review and assess the immigration enforcement activities that have been conducted pursuant to this MOU. The steering committee will meet periodically in San Bernardino County at locations to be agreed upon by the parties or by teleconference. These reviews are intended to assess the use made of immigration enforcement authority and to ensure compliance with the terms of this MOU. Steering committee participants will be supplied with specific information on case reviews, individual participants' evaluations, complaints filed, media coverage, and, to the extent practicable, statistical information on increased immigration enforcement activity in San Bernardino County. An initial review meeting will be held no later than nine months after certification of the initial class of participating SBSB personnel under Section VII, above.

XIV. COMMUNITY OUTREACH

SBSB will, in its discretion, engage in community outreach with individuals and organizations expressing an interest in this MOU. ICE may participate in such outreach upon SBSB request.

XV. RELATIONS WITH THE NEWS MEDIA

SBSB hereby agrees to coordinate with ICE any release of information to the media regarding actions taken under this MOU. The points of contact for ICE and SBSB for this purpose can be found at Appendix C.

XVI. MODIFICATION OF THIS MOU

Any modifications to this MOU must be proposed in writing and approved by the signatories.

XVII. DURATION AND TERMINATION OF THIS MOU

This MOU will be in effect from the date of signing until terminated by either party.

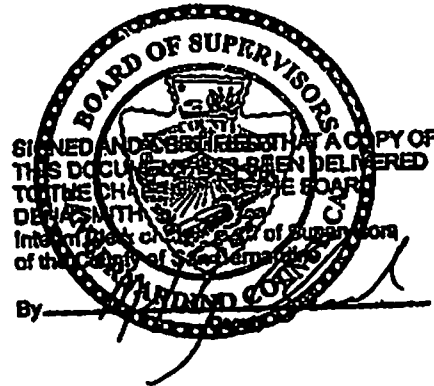
Either party, upon written notice to the other party may terminate it at any time. Should the State Criminal Alien Assistance Program funding fall below levels acceptable to the SBSB or be terminated in its entirety, the County of San Bernardino, in its sole discretion, may terminate this MOU. Termination notice shall be delivered personally or by certified or registered mail. Termination of the MOU shall take effect immediately after receipt of such notice.

Either party may, upon written or oral notice to the other party, temporarily suspend activities under this MOU when resource constraints or competing priorities

necessitate. Notice of termination or suspension by ICE shall be given to the San Bernardino County Sheriff. Notice of termination or suspension by SBSB shall be given to the ICE Special Agent in Charge in Los Angeles.

Except for the rights of participating SBSB personnel as described in Section X, this MOU does not, is not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

By signing this MOU, each party represents it is fully authorized to enter into this agreement, and accepts the terms, responsibilities, obligations and limitations of this Agreement, and agrees to be bound thereto to the fullest extent allowed by law.



Date: 10/19/05

Date: SEP 20 2005

Randy Bearsdworth
Under Secretary (Acting)
Border and Transportation Security
Department of Homeland Security

~~Chairman~~ PAUL BIARE, VICE-CHAIRMAN
~~Chair~~
San Bernardino County
Board of Supervisors

Date: 10-11-05

Date: SEP 12 2005

John P. Clark
Assistant Secretary (Acting)
U.S. Immigration and Customs Enforcement

Gary S. Perrod
Sheriff
San Bernardino County

As called for in Section III of the MOU, the ICE and SBSB points of contact for purposes of implementation of this MOU are:

For SBSB: b6,b7c Deputy Chief
Bureau of Detention and Corrections
655 E. Third Street
San Bernardino, CA 92415
b2Low

For ICE: b6,b7c
Assistant Special Agent in Charge
3403 Tenth Street, Suite 600
Riverside CA 92501
b2Low

APPENDIX B

COMPLAINT PROCEDURE

Appendix B: Complaint Procedure

This MOU is an agreement between DHS/ICE and the San Bernardino County (California) Board of Supervisors, in which selected SBSB personnel are authorized to perform immigration enforcement duties in specific situations under Federal authority. As such, the training, supervision, and performance of participating SBSB personnel pursuant to the MOU, as well as the protections for individuals' civil and constitutional rights, are to be monitored. Part of that monitoring will be accomplished through these complaint reporting and resolution procedures, which the parties to the MOU have agreed to follow.

The MOU sets forth the process for designation, training and certification of certain SBSB personnel to perform certain Immigration enforcement functions specified herein. Complaints filed against those personnel in the course of their non-immigration duties will remain the domain of the SBSB and be handled in accordance with SBSB Manual of Policy and Procedures. The SBSB will also handle complaints filed against personnel who may exercise immigration authority, but who are not designated and certified under this MOU. The number and type of the latter complaints will be monitored by the steering committee established under Section XIII of the MOU.

~~In order to simplify the process for the public, complaints against participating SBSB personnel relating to their immigration enforcement can be reported in a number of ways. The ICE Headquarters Office of Professional Responsibility (OPR) and the SBSB West Valley Detention Center will coordinate complaint receipt and investigation. The ICE OPR will forward complaints to the Department of Homeland Security's Office of Inspector General (DHS OIG) as appropriate for review, and ensure notification as necessary to the U.S. Department of Justice Civil Rights Division (DOJ CRT).~~

The ICE OPR will coordinate complaints related to participating personnel with the SBSB West Valley Detention Center as detailed below. Should circumstances warrant investigation of a complaint by the DHS OIG or the DOJ CRT, this will not preclude the DHS OIG, DOJ CRT or ICE OPR from conducting the investigation in coordination with SBSB Internal Affairs Bureau, when appropriate.

The ICE OPR will adhere to established procedures relating to reporting and resolving allegations of employee misconduct, and the SBSB Internal Affairs Bureau will follow applicable SBSB policies and procedures, personnel rules, California statutes, and collective bargaining agreements.

I. Complaint Reporting Procedures

A. Dissemination of Complaint Reporting Procedures

Complaint reporting procedures shall be disseminated as appropriate by the SBSD within facilities under its jurisdiction (in English and other languages as appropriate) in order to ensure that individuals are aware of the availability of such procedures.

B. Acceptance of Complaints

Complaints will be accepted from any source (e.g.: ICE, SBSD, personnel operating under the authority of this MOU, and the public).

C. Reporting Mechanisms

Complaints can be reported to federal authorities as follows:

1. Telephonically to the ICE OPR at the Joint Intake Center (JIC) in Washington, D.C. at the toll-free number 1-877-246-8253, or
2. Telephonically to the Resident Agent in Charge of the ICE OPR office in Long Beach, CA at (562) 980-3170, or
3. Via mail as follows:

~~U.S. Department of Homeland Security~~
~~U.S. Immigration and Customs Enforcement~~
~~Office of Professional Responsibility~~
425 I Street, NW
Room 3260
Washington, D.C. 20536

Complaints can also be referred to and accepted by any of the following SBSD entities:

1. The applicable SBSD West Valley Detention Center Commander
2. The supervisor of any participating SBSD personnel; or

3. SBSD Internal Affairs Bureau Unit as follows:

Lieutenant
Internal Affairs
San Bernardino County Sheriff's Department
655 E. Third Street
San Bernardino, CA 92415

D. Review of Complaints

1. All complaints (written or oral) reported to SBSD directly, which involve activities connected to immigration enforcement activities authorized under this MOU, will be reported to the ICE OPR. The ICE OPR will verify participating personnel status under the MOU with the assistance of the Special Agent in Charge of the ICE Office of Investigations in Los Angeles.
2. Complaints received by any ICE entity will be reported directly to the ICE OPR as per existing ICE policies and procedures.

For both of the above, the ICE OPR, as appropriate, will make an initial determination regarding DHS investigative jurisdiction and refer the complaint to the appropriate office for action as soon as possible, given the nature of the complaint.

- ~~3. Complaints reported directly to the ICE OPR will be shared with the West Valley Detention Center when the complaint involves SBSD personnel. Both offices will then coordinate appropriate investigative jurisdiction, which may include initiation of a joint investigation to resolve the issue(s).~~

II. Complaint Resolution Procedures

Upon receipt of any complaint, the ICE OPR will undertake a complete review of each complaint in accordance with existing ICE allegation criteria and reporting requirements. As stated above, the ICE OPR will adhere to existing ICE reporting requirements as they relate to the DHS OIG and/or the DOJ CRT. Complaints will be resolved using the existing procedures, supplemented as follows:

- A. Referral of Complaints to SBSD West Valley Detention Center Facility Commander.

The ICE OIA will refer complaints, as appropriate, involving SBSD personnel to the SBSD West Valley Detention Center Facility Commander for resolution.

The facility commander will inform ICE OPR of the disposition and resolution of any complaints referred by ICE OPR.

B. Interim Action Pending Complaint Resolution

Whenever any participating SBSB personnel are under investigation and subject to interrogation by SBSB for any reason that could lead to disciplinary action, demotion, or dismissal, the requirements of the Manual of the San Bernardino County Sheriff's Department shall be honored. If appropriate, an individual may be removed from participation in the activities covered under the MOU pending resolution of an inquiry.

C. Time Parameters for Resolution of Complaints

It is expected that any complaint received will be resolved within 90 days. However, this will depend upon the nature and complexity of the substance of the complaint itself.

D. Notification of Resolution of a Complaint

ICE OPR will coordinate with the SBSB West Valley Detention Center Facility Commander to ensure notification as appropriate to the subject(s) of a complaint regarding the resolution of the complaint.

APPENDIX C

PUBLIC INFORMATION POINTS OF CONTACT

Pursuant to Section XV of the MOU, the signatories agree to coordinate any release of information to the media regarding actions taken under this MOU. The points of contact for coordinating such activities are:

For SBSD:

Mike Stancell, Lieutenant
San Bernardino County Sheriff's Department
Public Affairs Division
655 E. Third Street
San Bernardino, CA 92415
(909) 387-3700

For ICE:

Public Affairs Officer
Office of Public Affairs and Internal Communication
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
425 I Street, N.W. Room 7232
Washington, D.C. 20536
~~(202) 544-2648~~