

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (MOA) constitutes the agreement between the United States Department of Homeland Security (DHS) and the County of Orange, a political subdivision of the State of California under which U.S. Immigration and Customs Enforcement (ICE) authorizes nominated, trained and certified personnel of the Orange County Sheriff's Department (OCSD) to perform certain immigration enforcement functions as specified herein. The OCSD represents Orange County in the implementation and administration of this MOA. It is the intent of the parties that this agreement will result in enhanced capacity to deal with immigration violators in Orange County jail facilities.

### I. PURPOSE

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

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

This MOA is entered into by OCSD as a cooperative effort with ICE to fulfill the purpose stated herein to the extent permitted by law or court order and, as determined by OCSD, its resources and capabilities.

### 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, 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 MOA constitutes such a written agreement.

### III. POLICY

This MOA sets forth the scope of the immigration officer functions that DHS is authorizing the participating OCSD 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 OCSD personnel be subject to ICE supervision while performing immigration-related duties pursuant to this MOA. For the purposes of this

MOA, ICE officers will provide supervision for participating OCSD personnel only as to immigration enforcement functions. OCSD retains supervision of all other aspects of the employment of and performance of duties by participating OCSD personnel.

Before participating OCSD personnel will be authorized to perform immigration officer functions granted under this MOA, 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.

Only participating OCSD personnel who are selected, trained, authorized and supervised as set out herein have authority pursuant to this MOA to conduct the immigration officer functions enumerated in this MOA.

The ICE and OCSD points of contact for purposes of this MOA are identified in Appendix A, which is attached hereto and incorporated herein by reference.

**IV. DESIGNATION OF FUNCTIONS**

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

<b>AUTHORITY</b>	<b>FUNCTIONS</b>
<ul style="list-style-type: none"> <li>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).</li> </ul>	<ul style="list-style-type: none"> <li>Interrogation in order to determine probable cause for an immigration violation.</li> </ul>
<ul style="list-style-type: none"> <li>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).</li> </ul>	<ul style="list-style-type: none"> <li>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.</li> </ul>
<ul style="list-style-type: none"> <li>The authority to prepare charging documents. INA §239, 8 C.F.R. 239.1; INA §238, 8 C.F.R 238.1; INA §241(a)(5), 8 C.F.R 241.8; INA §235(b)(1), 8 C.F.R. 235.3</li> </ul>	<ul style="list-style-type: none"> <li>Preparation of a Notice to Appear (NTA) application or other removal charging document, as appropriate, including Notice of Intent to Administratively Remove, Notice of Intent to Reinstate Removal, or Notice of Intent to Expeditiously</li> </ul>

<ul style="list-style-type: none"> <li>• The power to issue detainers. 8 C.F.R. § 287.7.</li> <li>• Transportation of aliens. 8 C.F.R. § 287.5(c)(6)</li> </ul>	<p>Remove for signature of ICE officer for aliens in categories established by ICE supervisors.</p> <ul style="list-style-type: none"> <li>• Prepare immigration detainers and I-213, Record of Deportable/Inadmissible Alien for aliens in categories established by ICE supervisors.</li> <li>• Transport Aliens.</li> </ul>
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In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating OCSD 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 OCSD personnel will be expected or required to violate or otherwise fail to maintain OCSD standards of conduct, or be expected or required to fail to abide by restrictions or limitations as may otherwise be imposed by law, or OCSD rules, standards, or policies.

The parties understand that OCSD will not continue to detain an alien after that alien is eligible for release from OCSD custody in accordance with applicable law and OCSD 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 Orange County will nominate to ICE candidates for initial training and certification under this MOA. For each candidate nominated, ICE may request any information necessary for a background check and evaluation for suitability to participate in the enforcement of immigration authorities under this MOA. All candidates must be United States citizens. All candidates will have at least two years experience as sworn law enforcement officers. 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 nominated, so long as the substituted nomination occurs in a timely manner and does not delay the start of training. Any future expansion in the number of participating OCSD 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 MOA. No candidate will be married to a person illegally present within the United States or knowingly have family associations which could adversely impact their ability to perform ICE functions under this MOA.

## VI. TRAINING OF PERSONNEL

ICE will provide appropriate training of nominated OCSD personnel tailored to the designated immigration functions and types of cases typically encountered by OCSD personnel at a mutually designated site in Orange County, utilizing ICE-designed curriculum and competency testing. Training will include presentations on this MOA, elements of this MOA, 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. OCSD is responsible for the salaries and benefits, including overtime, for any of its personnel being trained or performing duties under this MOA. OCSD 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 OCSD 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 MOA 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 OCSD 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 OCSD 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 OCSD. The ICE supervisory officer or designated team leader will evaluate the activities of all personnel, certified under this MOA, as addressed in Section IX, below.

Authorization of any participating OCSD personnel to act pursuant to this MOA may be revoked at any time by ICE or OCSD. Such revocation will require immediate notification of the other party to this MOA. The Orange 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 OCSD personnel become 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, OCSD 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



## X. LIABILITY AND RESPONSIBILITY

ICE and OCSD understand and agree that except as otherwise noted in this MOA and 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 OCSD 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 MOA, 8 U.S.C. § 1357(g)(7). It is the understanding of the parties to this MOA that participating OCSD 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 MOA, 8 U.S.C. § 1357(g)(8). ICE will not be responsible for any intentional misconduct on the part of any participating OCSD personnel.

Participating OCSD personnel who are named as defendants in litigation arising from activities carried out under this MOA 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 Office of the Chief Counsel at 606 South Olive St., 8<sup>th</sup> Floor, Los Angeles, CA 90014. Any request for representation must be clearly marked on each written communication that the information is "Subject to Attorney-Client Privilege." The Office of the Chief Counsel 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.~~

OCSD agrees to cooperate with any federal investigation related to this MOA to the full extent of its available powers. It is understood that information provided by any OCSD 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 Supreme Court's decision in *Giglio v. United States*, 405 U.S. 413, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) relates to disclosure of potential impeachment information about potential witnesses or affiants in a criminal case or investigation. *See also United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991). As the activities of participating OCSD personnel under this MOA 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 MOA, participating OCSD personnel will perform certain federal immigration enforcement functions. In doing so, these participating personnel are bound by all federal civil rights statutes, regulations, and policy directives, including the U.S. Department of Justice "Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies" dated June 2003.

Participating OCSD 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 OCSD as needed.

## XII. COMPLAINT PROCEDURES

The complaint reporting and resolution procedure for allegations of misconduct by participating OCSD personnel designated, or activities undertaken, under the authority of this MOA is included at Appendix B, which is attached hereto and incorporated herein by reference.

## XIII. REQUIRED REVIEW OF ACTIVITIES

The ICE Assistant Secretary and the Orange 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 MOA. The steering committee will meet periodically in Orange 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 MOA. 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 Orange County. An initial review meeting will be held no later than nine months after certification of the initial class of participating OCSD personnel under Section VII, above.

## XIV. COMMUNITY OUTREACH

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

## XV. RELATIONS WITH THE NEWS MEDIA

OCSD hereby agrees to coordinate with ICE with respect to any release of information to the media regarding actions taken under this MOA. The points of contact





By signing this MOA, 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: 11/2/06

Date: 10/17/06

Julie Myers  
Julie Myers  
Assistant Secretary  
Immigration and Customs Enforcement  
Department of Homeland Security

Bill Campbell  
Bill Campbell  
Board Chairman  
Orange County  
Board of Supervisors

Date: 11/2/06

Date: 10-18-06

Marcy M. Forman  
Marcy M. Forman  
Director of Investigations  
U.S. Immigration and Customs Enforcement

Michael S. Carona  
Michael S. Carona  
Sheriff-Coroner  
Orange County Sheriff-Coroner  
Department

APPROVED AS TO FORM  
OFFICE OF THE COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By: Nicole A. Sims  
Deputy  
Date: 10/6/06



SIGNED AND CERTIFIED THAT A COPY OF  
THIS DOCUMENT HAS BEEN DELIVERED TO  
THE CHAIRMAN OF THE BOARD  
PER G.C. SEC. 25103, RESO 79-1535  
ATTEST Darlene J. Bloom  
DARLENE J. BLOOM  
CLERK OF THE BOARD OF SUPERVISORS  
ORANGE COUNTY, CALIFORNIA

## APPENDIX A

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

For OCSD: Captain b6,b7c  
Professional Standards Division  
550 North Flower Street  
Santa Ana. CA 92703  
b6

For ICE: b6,b7c  
Acting Assistant Special Agent in Charge  
34 Civic Center Plaza, 4<sup>th</sup> Floor  
Santa Ana. CA 92701  
b2Low

## APPENDIX B

### COMPLAINT PROCEDURE

This MOA is an agreement between DHS/ICE and the County of Orange, California, in which selected OCSD personnel are authorized to perform immigration enforcement duties in specific situations under Federal authority. As such, the training, supervision, and performance of participating OCSD personnel pursuant to the MOA, 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 MOA have agreed to follow.

The MOA sets forth the process for designation, training and certification of certain OCSD 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 OCSD and will be handled in accordance with the OCSD Manual of Rules and Regulations. The OCSD will also handle complaints filed against personnel who may exercise immigration authority, but who are not designated and certified under this MOA. The number and type of the latter complaints will be monitored by the steering committee established under Section XIII of the MOA.

In order to simplify the process for the public, complaints against participating OCSD personnel relating to their immigration enforcement can be reported in a number of ways. The ICE Headquarters Office of Professional Responsibility (OPR) and the OCSD Professional Standards Division 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 OCSD Professional Standards Division 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 OCSD Internal Affairs Bureau, when appropriate.

The ICE OPR will adhere to established procedures relating to reporting and resolving allegations of employee misconduct, and the OCSD Internal Affairs Bureau will follow applicable OCSD 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 OCSD 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, OCSD, personnel operating under the authority of this MOA, 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 OCSD entities:

1. Within the applicable facilities under OCSD jurisdiction;
2. The supervisor of any participating OCSD personnel; or
3. OCSD Internal Affairs Bureau as follows:

Professional Standards Division  
Internal Affairs Bureau  
550 North Flower Street  
Santa Ana, CA 92703

#### D. Review of Complaints

1. All complaints (written or oral) reported to OCSD directly, which involve activities connected to immigration enforcement activities authorized under this MOA, will be reported to the ICE OPR. The ICE OPR will verify participating personnel status under the MOA 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 OCSD Professional Standards Division when the complaint involves OCSD 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 OCSD Professional Standards Division

The ICE OIA will refer complaints, as appropriate, involving OCSD personnel to the OCSD Professional Standards Division for resolution. The Professional Standards Division 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 OCSD personnel are under investigation and subject to interrogation by OCSD for any reason that could lead to disciplinary action, demotion, or dismissal, the requirements of the OCSD Manual of Policy and Procedures shall be honored. If appropriate, an individual may be

removed from participation in the activities covered under the MOA pending resolution of an inquiry. Under such circumstances, either Party to this MOA may make the decision to remove the individual from participation in the activities covered under the MOA.

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 OCSD Professional Standards Division 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 MOA, the signatories agree to coordinate any release of information to the media regarding actions taken under this MOA. The points of contact for coordinating such activities are:

For OCSD:

Jim Amormino  
Director of Public Affairs  
550 North Flower Street  
Santa Ana, CA 92701  
(714) 647-7042

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) 514-2648