

ICE IN ORANGE COUNTY

SUMMARY

On October 17, 2006, the Orange County (OC) Board of Supervisors (BOS) approved the Memorandum of Agreement (MOA) between the United States Department of Homeland Security (DHS) and the Orange County Sheriff-Coroner Department (OCSD). The MOA's objective is to allow OCSD deputies to check the immigration status of all individuals who are booked at OCSD jails, to prepare case files on Undocumented Individuals (UIs) and to notify DHS of UIs who should be detained.

In December, 2006, 14 OCSD deputies became working partners with the Federal Immigration and Customs Enforcement (ICE) agency, a division of the DHS. These deputies were given four weeks of ICE training and sworn-in by ICE officials to assume many of the duties of the larger federal agency. Following the training, the OCSD deputies received an additional two weeks of hands-on training at an ICE facility. The cost of training was paid by DHS; however, OCSD was required to pay the overtime cost for replacing the OCSD deputies during the training.

This report describes the criminal UI problem, the MOA, concerns by the public about the MOA, the ways the progress and results will be monitored, and some results to date. These are still questions that are not a part of this study:

1. Will ICE trained OCSD jail deputies reduce the number of illegal criminals?
2. Will immigrant groups support these new efforts to remove those members of their own nationalities who prey upon them?
3. Will deportation of these criminals be permanent, or will there still be the "revolving door" that existed before this new program was begun?

REASONS FOR THE INVESTIGATION

The MOA was a hotly debated issue between Civil Rights groups, the OC BOS and the OCSD. Many civil rights groups feel that the MOA will actually increase crime in neighborhoods with UIs and deny their due process rights. The OCSD believes that the MOA will reduce crime in OC and save money by removing criminally active UIs from OC.

The purpose of this report is to present the facts about the MOA, how it has been implemented, and concerns voiced by the community to the MOA.

METHOD OF INVESTIGATION

To study the effectiveness of the MOA, the 2006-2007 Grand Jury:

- conducted interviews with the OCSD Jail and Supervisor personnel;
- conducted interviews with civil rights groups;
- attended community forums and debates;
- conducted interviews with Immigrations and Customs Enforcement personnel;
- met with the Sheriff's Community Coalition committee;
- reviewed the BOS meeting when the MOA was approved;
- collected statistics on UIs booked at OC jails; and
- reviewed the MOA.

BACKGROUND AND FACTS

What is ICE?

With the terrorist attack of September 11, 2001, the federal government recognized the need to focus resources on better securing our borders, protecting our infrastructures, and alerting the public to potential threats. To accomplish these and many related goals, the DHS became the largest investigative branch created to meet this end. This agency, in turn, combined the former Immigration and Naturalization Service (INS) with the U. S. Customs Service to create the Immigration and Customs Enforcement (ICE) agency. This group is responsible for "...targeting illegal immigrants: the people, money and materials that support terrorism and other criminal activities." They work to prosecute businesses that hire UIs, to arrest and prosecute UI criminals, to detect those who forge visas and passports, and to track those who transport aliens through our borders (coyotes). Up to this point, the individual states had limited responsibility for UI issues and were unable to check the immigration status of UIs through federal databases.

OC had limited positive results when ICE functioned as a separate entity on duty at the OC Jail Complex. There were too few agents available to check the immigration status of those people who were detained. UIs were sometimes released because their legal jail-custody time had lapsed and they returned to society. Many times the system became a "revolving door" in which many UIs with criminal histories and past deportation orders escaped permanent removal from the country because of the lack of ICE agents to check their immigration status.

To increase efficiency and reduce the federal dollars spent, Congress created Section 287(g) of the Immigration and Nationality Act (8 U.S.C. 1357), which gives the potential for broader powers to interested county or state governments. With this act, these non-federal entities can investigate immigrant violations, utilize the ICE computer databases, collect evidence, assemble a possible case, take custody of suspected offenders, and place immigration detainees on UIs booked at OC jails.

Those counties and state governments who desire this expanded role create MOAs with the DHS. Since individual states and counties may have different needs, based on their local immigration issues, the plans are tailored to meet their specific requirements.

The OCSD management believes that the number of OC's UI criminals can be reduced by teaming with the ICE agency. They based their decision in part on the statistics of UI crime in OC. Initially, the OCSD management proposed that the OCSD jail, patrol and investigation departments be trained for ICE functions. OCSD management met with several community groups and determined that many of these groups would accept the policy if it were limited to OCSD jail deputies. To allay the fears of the community, OCSD management agreed to limit the MOA to only OCSD jail deputies.

According to OCSD management there are 55,322 total UIs in USA prisons and jails. Of that number, 58% are in California. Twelve per cent of the arrests were for violent crimes. Other numbers indicate that 75% of the UIs booked in OC jails were not authorized to be in the USA. In voting for the MOA, it was noted that OC is spending \$17 million per year to

2006-2007 ORANGE COUNTY GRAND JURY

house UIs in OC jails; this was based on the cost to house a prisoner and the number of estimated UIs in OC jails.

The Memorandum of Agreement

County agencies often enter into MOAs with government entities with whom they conduct business. These written guidelines note each entity's responsibilities, goals and how achievements will be monitored. It is important to note that nothing in the MOA changes or alters existing federal immigration law or the order of proceedings.

Highlights of the ICE/OC MOA include the following:

- Implementation of the plan is to occur only at the OC jail facilities. The patrol and investigative units of OCSJ can not have access to the ICE database. There are to be no county-wide sweeps of UIs. The immigration status of a person can only be checked if that person is booked for a possible crime at the OCSJ Central or Theo Lacy jails. Due process will protect the individual's civil rights.
- There are requirements for OCSJ deputies desiring to enter the program. They are volunteers willing to commit at least one year of serving in the OC jails. They are selected based on seniority, education level, and language abilities. They are screened by the federal government and must be approved by the ICE agency. There are no second-language requirements or incentive pay for those who are accepted.
- The training period for selected deputies consists of a four week study in a variety of related subjects. Areas include: scope of authority, what a deputy may or may not do, immigration laws, civil rights, inter-cultural relations, and the problems associated with racial profiling.
- Periodic examinations are given regularly to assure understanding during the training period. Additionally, after training is completed and graduation has occurred, there is time allotted for on-the-job experience under ICE guidance.
- Training costs, including materials and supervision, are provided by ICE. Any overtime costs for back-filling hours lost by deputies-in-training and salaries of the deputies when they perform ICE functions at the jails are paid for by OCSJ.
- One year after initial training, ICE may provide training updates to review legal changes or organizational issues.
- ICE retains the primary authority and supervision of OCSJ deputies when they are providing ICE services to the community.
- Any complaints by the public must be reported to the ICE supervisor.
- In an effort to keep an open dialogue between OC citizens, ICE, and OCSJ, a community outreach committee has been established.

2006-2007 ORANGE COUNTY GRAND JURY

Areas of Concern

There are groups of citizens who have expressed their concerns with the new responsibilities that will be assumed by the OCSD. The American Civil Liberties Union, (ACLU), Los Amigos, South Bay Asian Network, and the Council on American-Islamic Relations have noted such long-term potential issues as:

- The new plan may overburden the responsibilities of local deputies. Increased overtime for this group would yield a higher tax burden for citizens.
- Local deputies would be doing the work of the federal government. Responsibility for enforcing immigrant issues needs to remain with the larger federal entity.
- The plan will create “negative energy and negative tension” between Latinos and the police. A “chilling effect” may occur with all county minority groups.
- There may be reluctance of victims to report crimes because of the fear of retribution by criminal perpetrators. Strong evidence shows that gangs of UIs often prey upon their own nationalities.
- Undocumented victims might not report crimes in fear of their own deportation.
- The plan may deny due process. Criminals might be deported without benefit of investigation, indictment or trial.
- Other areas of the country have reported that ICE has made “sweeps” of businesses to find UIs. Even though the MOA with Orange County prohibits these encounters, the fear remains.

OCSD UI Processing

The cities which contract with the OCSD and the unincorporated areas of OC will have all their arrestees transported to the OC Central Jail Intake and Release Center (IRC). By default, all of these arrestees will be checked for their immigration status prior to their arraignment hearings.

Those cities which do not contract with OCSD and do not have an ICE agent at their jail transport non-felony arrestees directly to court for arraignment. If the arrestee is released prior to or at the arraignment hearing, his or her immigration status is not checked. It is not until the arrestee is transported from court to the OC IRC that his/her immigration status is checked.

OC Large City Jails Access to ICE Agents

OC cities with a population of over 100,000 residents are considered large cities. According to ICE management, of these large cities there is currently one fulltime ICE agent assigned to the Costa Mesa City Jail and one part time ICE agent assigned to the Anaheim City Jail. All OC Large City Jails have access to ICE agents via telephone, e-mail and a future video conferencing system. It is at the discretion of the city and police management as to how often and when ICE agents are contacted.

2006-2007 ORANGE COUNTY GRAND JURY

Costa Mesa ICE Agent

The Costa Mesa City Jail has one full time federal ICE agent. As at OC IRC, people who are booked at this police facility are asked where they were born. If they say they were born outside of the U.S.A., or if it is determined that they were born outside of the U.S.A., their file is given to an ICE agent. If an ICE agent is required and not personally available, he is reachable by phone.

In December, 2006 and January, 2007, the Costa Mesa Police Department (CMPD) booked 870 individuals in the jail of whom 107 individuals were detained for immigration violations. Of these 107 individuals there were 44 felony, 57 misdemeanor, and 3 infraction charges. Also, a person's ICE status is noted in a police record available to the general public at the front desk of the CMPD station. Presently, a determination of a person's immigration status is only performed by ICE agents. CMPD management is making a concentrated effort to ensure that citizens do not feel they are being detained by police to check their immigration status.

CMPD management believes this working arrangement with ICE is effective for the city. When asked about the OCSD plan of training deputies to act as ICE agents, CMPD management noted that freeing time for this training in Costa Mesa would not be feasible because of cost and unavailability of personnel.

Anaheim ICE Agent

The Anaheim city jail has one part time federal ICE agent who, since January 17, 2007, has been coming to the Anaheim jail Monday through Friday mornings. The Anaheim police do not hold an arrestee for the sole purpose of being interviewed by ICE. The Anaheim police do not forward any files to the ICE agent; rather, the ICE agent comes into the Anaheim jail and reviews the computer arrest log. The ICE agent then selects certain arrestees to interview. If ICE determines an arrestee is an UI, a document requesting that an immigration detainer be placed on the UI is faxed to the Anaheim police. Once the UI has been processed or adjudicated, Anaheim police release the UI to ICE. ICE agents pick up UIs from the Anaheim jail on Monday through Saturday.

From January 17, 2007, to March 10, 2007, ICE agents placed an immigration detainer on 122 Anaheim city jail UIs. Anaheim averages about 1000 bookings per month. None of the UIs were in jail because of an infraction. Most of the 122 UIs would have been identified by the OCSD because the seriousness of their crimes would have placed them at the OC IRC.

Anaheim police management believes this working arrangement with ICE is effective but they would like to have a full time ICE agent at their jail. They do not want to have any of their officers discussing with UIs their immigration status. Also, they do not desire to have any of their officers trained to act as ICE agents.

Anaheim Police management is making a concentrated effort to ensure that citizens do not feel they are being detained by police in order to check their immigration status. To that end, all determination of a person's immigration status is performed only by ICE agents. Furthermore, there is no indication, on the public viewable arrest log, if a person has an immigration detainer.

2006-2007 ORANGE COUNTY GRAND JURY

MOA Oversight

In an effort to ease public concerns about the MOA, the Sheriff's Community Coalition committee (SCC) will act as the public sounding board for OCSD. The SCC is a group of community based organizations which are invited by the OCSD management to be members. Some active members of SCC are: Los Amigos, 100 Black Men of OC, OC Housing and Community Services, Anti-defamation League and ACLU. SCC holds regularly-scheduled sessions with OCSD management for discussing ICE issues. At one of these meetings, committee members suggested that pamphlets be created and distributed that explain the program in Spanish and other languages. Neighborhood meetings were also suggested.

As part of the MOA oversight requirements, OCSD published the statistics in Exhibit 1. These statistics show that about 11% of the inmates booked at OC jails had an immigration detainer placed on them (1,855 out of 16,787). The majority of detained UIs were from Latin America but some were from Egypt, Pakistan, Iran, Afghanistan, Germany, Romania, Vietnam, Thailand, South Korea, England and Canada. If the trend at OCSD continues, it is estimated that OC will save about \$17 million dollars per year by removing UIs from the jail population.

For the cities of Costa Mesa and Anaheim, about 12% of the inmates booked had an immigration detainer placed on them. OCSD management expects their percentage of UIs to increase after the twelve additional deputies are ICE trained. Currently, OCSD is prioritizing checking of UIs based on each UI's criminal history, criminal sophistication and the seriousness of the crime.

FINDINGS

In accordance with California Penal Code sections 933 and 933.05, each finding will be responded to by the government entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court. The 2006-2007 Orange County Grand Jury has arrived at the following findings:

- F-1. The OCSD is currently preparing a coordinated plan to provide information to OC communities about the MOA and to gather information about community concerns with the MOA.
- F-2. OCSD does not identify on their web site or their public viewable arrest log those booked prisoners who have an immigration detainer placed on them.
- F-3. Cities which contract with OCSD and Costa Mesa have the immigration status of all booked individuals checked. Anaheim has only a part time ICE agent. However, it is unclear if OC's large cities (Santa Ana, Huntington Beach, Irvine, Orange, Fullerton and Garden Grove) check the immigration status of all individuals booked at their city jails.

Responses to Findings F-1 and F-2 are required from the Orange County Sheriffs-Coroner Department.

2006-2007 ORANGE COUNTY GRAND JURY

A response to Finding F-3 is required from the Mayors and requested from the Police Chiefs of the cities of Santa Ana, Huntington Beach, Irvine, Orange, Fullerton and Garden Grove.

RECOMMENDATIONS

In accordance with California Penal Code sections 933 and 933.05, each recommendation will be responded to by the government entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court. Based on the findings of this report, the 2006-2007 Orange County Grand Jury makes the following recommendations:

- R-1. The OCSD should complete the plan to gather community information and opinions about the OCSD ICE program and include a strategy to inform the community about SCC's role in the program. (This recommendation arises from Finding F-1.)
- R-2. OCSD should consider adding to their website and their public viewable arrest log a notation if a booked prisoner has an immigration detainer. (This recommendation arises from Finding F-2.)
- R-3. To ensure consistency within OC, the cities of Anaheim, Santa Ana, Huntington Beach, Irvine, Orange, Fullerton and Garden Grove should consider entering into an agreement with ICE, or make an arrangement with OCSD, to ensure that **all** people booked at their jails have their immigration status checked with ICE and hold UIs for ICE transport to federal facilities. (This recommendation arises from Finding F-3.)

Responses to Recommendations R-1 and R-2 are required from the Orange County Sheriffs-Coroner Department.

A Response to Recommendation R-3 is required from the Mayors and requested from the Police Chiefs of the cities of Anaheim, Santa Ana, Huntington Beach, Irvine, Orange, Fullerton and Garden Grove.

RESPONSE REQUIREMENTS

The California Penal Code specifies the required permissible responses to the findings and recommendations contained in this report. The specific sections are quoted below:

- §933.05(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:
- (1) The respondent agrees with the finding.
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.
- (b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

2006-2007 ORANGE COUNTY GRAND JURY

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

2006-2007 ORANGE COUNTY GRAND JURY

EXHIBIT 1

2007 OC Jail Statistics Released to the Public by OCSD

	January*	February	March	Totals
Booked OCJ	5,922	5,204	5,661	16,787
Interviews	249	707	899	1,855
Detainers	158	481	575	1,214
Aggravated Felony	12	44	22	78
Gang Member	6	48	20	74
Misdemeanor	41	173	218	432
Felony	117	308	357	782
Male	249	687	886	1,822
Female	0	20	13	33

* January 19, 2007 through January 31, 2007

Booked OCJ:

Number of inmates booked at the OC Jails.

Interviews:

ICE deputy speaks to an individual regarding their nationality in order to determine if they are in the United States legally.

Detainers:

Immigration detainers are placed on an individual once it is determined that they are violating their immigration status.

Aggravated Felony:

Aggravated felony are those crimes listed under INA Section 101(a)(43) [8 USC 1101(a)(43)]. For example under subsection (a); murder, rape or sexual abuse of a minor are listed.

Gang Member:

The person interviewed is a member of any street gang.

ACKNOWLEDGEMENT

The Grand Jury would like to acknowledge the OCSD deputies who volunteered to become trained ICE representatives. They worked late nights and weekends to prepare themselves for their new duties. Their test scores during the training program were excellent. They have committed themselves to be skilled and professional ICE representatives.

The First OCSD Graduates of the ICE Cross-Designation Program

2006-2007 ORANGE COUNTY GRAND JURY

