ATTACHMENT #4

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 SBSD 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 SBSD personnel (participating SBSD personnel) to perform certain functions of an immigration officer within San Bernardino County jail facilities, and how those participating SBSD 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 SBSD personnel as members of the SBSD. The exercise of the immigration enforcement authority granted under this MOU to participating SBSD 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 SBSD 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 SBSD 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 SBSD personnel only as to

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

Before participating SBSD 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 SBSD 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.

The ICE and SBSD points of contact for purposes of this MOU are identified in Appendix A.

IV. DESIGNATION OF FUNCTIONS

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

AUTHORITY	FUNCTIONS
• 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).	• Interrogate in order to determine probable cause for an immigration violation
• 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).	• Complete required criminal alien processing, to include fingerprinting, photographing, and interviewing, for ICE supervisor review
• The power to issue detainers. 8 C.F.R. 287.7.	• Prepare affidavits and take sworn statements • Prepare immigration detainers and I-213, Record of Deportable/Inadmissible Alien for aliens in categories established by ICE supervisors

AUTHORITY	FUNCTIONS
• The authority to prepare charging documents. INA Section 239, 8 C.F.R. 239.1; INA Section 238, 8 C.F.R 238.1; INA Section 241(a)(5), 8 C.F.R 241.8; INA Section 235(b)(1), 8 C.F.R. 235.3.	• Prepare, as needed, a Notice to Appear (NTA) 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 Remove for signature of ICE officer for aliens in categories established by ICE supervisors
• Transportation of aliens. 8 C.F.R. 287.5(c)(6).	• Transport aliens under arrest

In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating SBSD 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 SBSD personnel will be expected or required to violate or otherwise fail to maintain SBSD standards of conduct, or be required to fail to abide by restrictions or limitations as may otherwise be imposed by law, or SBSD rules, standards, or policies.

The parties understand that SBSD will not continue to detain an alien after that alien is eligible for release from SBSD custody in accordance with applicable law and SBSD 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 SBSD. 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 SBSD 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 and accepted SBSD personnel tailored to the designated immigration functions and types of cases typically encountered by SBSD 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. SBSD is responsible for the salaries and benefits, including overtime, for any of its personnel being trained or performing duties under this MOU. SBSD 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 SBSD 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 SBSD 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 SBSD 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 SBSD. 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 SBSD personnel to act pursuant to this MOU may be revoked at any time by ICE or SBSD. 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 SBSD 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, SBSD shall, to

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FROM THE OFFICE OF THE CITY CLERK

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