



CITY COUNCIL AGENDA REPORT

MEETING DATE: December 6, 2005

ITEM NUMBER: Item Number

SUBJECT: REQUEST OF MAYOR MANSOOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) BUREAU TO CONDUCT FEDERAL IMMIGRATION INVESTIGATIONS IN COSTA MESA

DATE: November 22, 2005

FROM: POLICE DEPARTMENT / TECHNICAL SERVICES DIVISION

PRESENTATION BY: CHIEF JOHN HENSLEY

FOR FURTHER INFORMATION CONTACT: LT. ALLEN HUGGINS 714-754-5282

RECOMMENDATION:

Provide direction on securing an agreement with U.S. Immigration and Customs Enforcement (ICE) regarding the use of Costa Mesa Police Department personnel to enforce immigration laws on individuals arrested and brought into the City's custodial facility.

BACKGROUND:

At the request of Mayor Allan Mansoor, the Police Department contacted ICE to examine the criteria and procedures for enforcement of Federal immigration laws by local law enforcement. The United States Congress passed Section 287(g) as an amendment to the 1996 Immigration and Nationality Act. 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 Undersecretary 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. The initiative is designed to effectively multiply the forces of the U.S. Immigration and Customs Enforcement ("ICE") through enhanced cooperation and communication with state and local law enforcement. Under 287(g), ICE provides state and local law enforcement with the training and subsequent authorization to identify, process, and detain immigration offenders they encounter during their daily law-enforcement activity.

Section 287(g) is a voluntary program in which local or state law enforcement agencies or government departments can participate. Interested agencies are required to submit a participatory application to ICE. Once the application is approved, ICE and the interested agency are responsible for creating a Memorandum of Understanding (MOU) to outline the specific responsibilities and procedures appropriate to the law enforcement group's needs and capabilities. ICE will then develop a specialized training course (approximately 3.5 weeks in duration) for that agency, focusing on immigration law, civil rights, intercultural relations, and the issues and illegalities

surrounding racial profiling. After the successful completion of the course, including passing all related examinations, the officers receive an official certification from ICE that allows them special authority regarding immigration violators, called 287(g) authority. After certification, ICE continues to provide supervision and support to determine if a suspect is an immigration violator. At the present time, ICE has decided that the focus of the 287(g) Delegation of Authority Program will be the criminal aliens incarcerated in county and local jails. .

As of September 9, 2005, there were 62 trained and certified officers in the Florida Department of Law Enforcement and 21 in the Alabama State Police, with twenty-five more slated to earn certification in 2006. By the end of 2005, ICE will have completed training six Los Angeles County Jail custody assistants to process criminal aliens, while they are in jail custody, for removal from the U.S. In February 2006, ICE will be training 24 personnel from the San Bernardino and Riverside County Sheriff's Departments, as well as 12 additional deputies from the Los Angeles County Sheriff's Department. The Arizona Department of Corrections is also developing an MOU with ICE regarding 287(g) authority.

ANALYSIS:

To better understand the authorities delegated by ICE under the 278(g) Delegation of Authority Program, the MOUs of several agencies were reviewed. The following is a synopsis of each reviewed MOU:

State of Florida

Florida's MOU with ICE indicates officers are only allowed to enforce immigration law in conjunction with ongoing domestic security investigations. Such officers must specifically work as part of the state's Regional Domestic Security Task Force. Florida's MOU does not allow officers to enforce immigration laws during the course of their regular duties. (Refer to Attachment 1.)

Alabama Department of Public Safety

The Alabama Department of Public Safety's MOU allows troopers, during the course of their regular duties, to question, detain, and arrest individuals who are in the U.S. unlawfully. The MOU indicates that troopers will not be conducting immigration-related raids on businesses or workplaces. (Refer to Attachment 2, which contains a news release.)

Los Angeles County Sheriff's Department

The Los Angeles Sheriff's Department's MOU allows specially trained personnel to perform certain functions of an immigration officer within the Los Angeles County Jail facilities. Deputies assigned outside the jail facilities will not be allowed to enforce immigration laws. (Refer to Attachment 3.)

San Bernardino County Sheriff's Department

The San Bernardino County Sheriff's Department's MOU allows nominated personnel, who have successfully passed the ICE background and training programs, to perform certain functions of an immigration officer within the San Bernardino County Jail facilities. These specified functions are interrogation to determine probable cause for an immigration violation; completion of required criminal alien processing; preparation of affidavits and taking of sworn statements; preparation of immigration detainers and 1-213, Record of Deportable/Inadmissible Alien; preparation of a Notice to Appear or other removal-charging document; and transportation of aliens under arrest. (Refer to Attachment 4.)

Arizona Department of Corrections

The Arizona Department of Corrections plans on allowing selected personnel to perform certain functions of an immigration officer. These functions are interrogation to determine probable cause for an immigration violation; completion of required criminal alien processing; preparation of affidavits and taking of sworn statements; preparation of immigration detainers and 1-213, Record of Deportable/Inadmissible Alien; and preparation of a Notice to Appear or other removal-charging document. (Refer to Attachment 5.)

Orange County Sheriff's Department

The Orange County Sheriff's Department is still working on developing a final proposal and MOU with ICE. Included is a copy of a draft proposal as well as some media articles. (Refer to Attachment 6.)

Direction of ICE Enforcement

Since the inception of the Delegation of Authority Program under 287(g), the number of agencies that have sought authorization or that have been authorized to enforce immigration laws is limited when compared to the total number of law enforcement agencies across the nation. Those that have received the Delegation of Authority Program are mostly focused on the custodial environment for the enforcement of immigration laws. At the present time, ICE has made the decision that the focus of the 287(g) Delegation of Authority Program would be criminal aliens incarcerated in the county and local jails. ICE has indicated they are not interested in authorizing the Delegation of Authority Program for field officers. While the focus of this report is on the custodial environment within the Costa Mesa City Jail ("Jail"), the Mayor has also expressed interest in pursuing the training of Field personnel as well.

Requirement Compliance

In order to begin to enforce federal immigration laws per 287(g), the City of Costa Mesa would be required to send a request to ICE. Once the request is received and accepted, an MOU would be necessary to establish the roles, responsibilities, and liabilities of the respective agencies. Once all parties agree on an MOU, the custody officers would need to be trained.

Per ICE, these custody officers must have a minimum of two years' experience before they are qualified for cross-designation, and are thereby eligible to enforce federal immigration laws. Of the current custody staff, three do not meet this requirement, with each having less than six months of full-time service as a custody officer. It is not known if the two additional custody officers required to meet the increased responsibilities of federal immigration enforcement would meet the minimum two years of custody officer experience.

Absent having all custody officers cross-designated, custody officers qualified to be cross-designated must be present on as many shifts as possible, thus maximizing the federal immigration enforcement capabilities. This could be problematic, as the current scheduling formulas are based on seniority. If a senior custody officer is required to sign up for a less-desired shift due to cross-designation, potential for grievances could exist. However, if cross-designated custody staff is not scheduled to maximize its presence throughout the entire schedule, all shifts included, then cross-designated personnel would not always be available to scrutinize incoming arrestees for potential federal immigration violations. If no cross-designated staff worked during a particular shift, the following shift could have the appropriate staff to evaluate arrestees still housed. However, this would not solve this issue completely, as arrestees could be released prior to the beginning of the next shift, and there may still be no cross-designated custody officer working the next shift.

Once determining who on the current custody staff is eligible for cross-designation, and thereby eligible to enforce federal immigration laws, the custody officers would be required to be trained. ICE provides the trainer for the 3.5 weeks of mandated training at no cost to the city. The city would be required to provide a training location for the duration of the training.

A consideration is the logistics of getting the entire eligible custody officer staff trained. If the city could persuade ICE to send a trainer twice, so half the eligible staff could be trained at a time, the impact on the Jail would be lessened, although still severe, requiring overtime shifts to meet the minimum staffing needs for the 3.5 weeks of training. If half the staff were trained at a time, it would take an estimated 80 to 90 hours of overtime to meet minimum staffing needs each week for the 3.5 weeks of training. If the city were unable to persuade ICE to send the trainer twice to help accommodate the staffing needs, then other alternative training sites would have to be located. As indicated, both the Los Angeles County Sheriff's Department and the San Bernardino County Sheriff's Department are in the process of training employees through ICE. It is possible that some of Costa Mesa's custody staff could attend their training, although neither agency has been contacted to confirm availability of training space. If Jail employees are to attend the 3.5 weeks of training in Los Angeles or San Bernardino, it is anticipated that per diem costs would be associated with the training.

Employment Considerations

As indicated above, custody staff must successfully complete a 3.5-week ICE-sponsored training to be eligible to enforce federal immigration laws within the Jail. All of the current employees are working under an existing employment MOU with the City of Costa Mesa. All current employees were also hired according to the custody officer job description, which included essential functions and qualification guidelines.

If custody officers must volunteer to enforce federal immigration laws per the 287(g) Delegation of Authority Program, then dealing with potential sensitive employment issues becomes less of a concern. If the program becomes a mandate, then appropriate consideration must be given to how the program affects all aspects of employment.

There are avenues to mitigate potential employment concerns. Including federal immigration enforcement in the job description for all new hires will alleviate the issues for new employees. This will not alleviate the concerns for current employees.

One alternative is a two-tiered custody officer classification in which the custody officers who are cross-designated under the Delegation of Authority Program would receive additional compensation. To eliminate employment concerns, the new custody officer classification would have the job description that incorporates the federal immigration enforcement language. This type of classification could also help to encourage the existing custody staff to become cross-designated. A second and similar alternative is to provide a special ICE assignment pay to employees trained and designated under the Delegation of Authority Program.

Staffing

As with any new program introduced, the program's effect on existing staffing is of priority concern. The Jail currently operates with nine custody officers: eight staff the jail and one is the court liaison officer. The city has authorized the Jail to increase its staffing to ten custody officers as of January 1, 2006. This was in response to a demonstrated need that the existing number of personnel could not adequately handle the staffing issues, including sick-call and vacation relief, without an undue burden of overtime.

If the City of Costa Mesa entered into an MOU with ICE, staffing needs would have to be readdressed. To prepare sufficient staffing to handle the new enforcement of the immigration laws established in an MOU with ICE under 287(g), potential staffing needs were reviewed. Considering current staffing and the upcoming schedule with the newly authorized position, there are several instances where only a single custody officer is working in the Jail, specifically on Friday, Saturday, and Sunday day-watch shifts. This does not take into account the custody officer vacations, mandated training, or sick-call relief. (Refer to attachment 7.)

The enforcement of immigration laws within the Jail would require custody officers to take the time to properly seek out and identify immigration law violations committed by booked arrestees. If a custody officer determines a potential violation of federal immigration law, that officer is required to complete the necessary documentation. Since ICE requires each immigration violation to be transported to the Immigration Detention Facility as soon as possible, seven days a week, the custody officer must then transport the violator to the Westminster detention facility. The custody officer then completes any additional documentation necessary to book the immigration violator into the detention center. The process of transportation and booking at the Westminster Detention Facility could take two to three hours. These identified responsibilities would be in addition to the routine responsibilities in the high-liability custodial environment.

The Jail has averaged 386 bookings per month during 2005. Each booking requires the completion of documentation, as well as classification, safe care, and housing until the inmate is transported to court or appropriately released. In order to sufficiently handle the additional responsibilities included in the enforcement of federal immigration laws, as well as handle the many other responsibilities associated with custody officers, the minimum staffing requirements in the Jail must increase by two custody officers. The additional custody officers would allow for a minimum of two custody officers per shift, with three on Friday and Saturday evenings, and would also allow for vacation relief, mandated training relief, sick-call relief, and the transportation of immigration violators to the Westminster detention facility. The cost of a custody officer is \$82,055 (inclusive of salary and benefits) each, for a total of \$164,110 for two custody officers. This does not include any increases in overtime costs that may result, or any increases in maintenance and operational costs i.e. uniform costs or any increases in supply costs. (Refer to Attachment 8.)

ALTERNATIVES CONSIDERED:

A considered alternative is to not apply to ICE to have staff cross-designated to enforce federal immigration laws. With this alternative, no federal immigration enforcement would take place in the Costa Mesa Jail. There is no fiscal impact for this alternative, as the positions in the Jail are already budgeted for fiscal year 2005–2006.

An additional alternative would be for the City to request training for both Custody personnel and Field personnel. Although ICE representatives have indicated that current training is limited to Custody personnel only, this does not prohibit the City from making a request to train Field personnel as well. If this alternative is to be pursued, staff would suggest that the City contact Congressman Dana Rohrbacher for assistance in obtaining this training.

FISCAL REVIEW:

If the City enters into an MOU with ICE, the City may need to hire two additional custody officers at an annual on-going cost of \$164,110 (inclusive of salary and benefits.) In addition, the City would need to provide the necessary training for the seven custody officers at an estimated cost of \$26,418. The total unbudgeted additional annual operating cost would be \$190,528. These costs were not included in the 2005/06 adopted budget. Therefore, a new funding source would need to be identified to fund the additional annual operating costs.

For the alternative considered, there is no fiscal impact.

LEGAL REVIEW:

Approved as to form.

CONCLUSION:

The Police Department is seeking direction from Council as to whether to seek to secure an MOU with ICE to enforce Section 287(g) that the United States Congress passed as an amendment to the 1996 Immigration and Nationality Act. 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 Undersecretary 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.

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DISTRIBUTION:

- ATTACHMENTS:
1. [MOU - DOJ and State of Florida](#)
 2. [MOU – DHS and State of Alabama
Department of Public Safety](#)
 3. [MOU – DHS and Los Angeles Sheriff’s Department](#)
 4. [MOU – DHS and San Bernardino Sheriff’s Department](#)
 5. [MOU – DHS and Arizona Department of Corrections](#)
 6. [Draft Proposal – Orange County Sheriff’s Department](#)
 7. [Current Custody Officer Schedule](#)
 8. [Proposed Custody Officer Schedule](#)

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