
UNITED STATES DEPARTMENT OF JUSTICE AND ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE



Agreement for the Sustainability of Custodial Informant Reforms

January 2025

AGREEMENT FOR THE SUSTAINABILITY OF CUSTODIAL INFORMANT REFORMS
BETWEEN THE UNITED STATES DEPARTMENT OF JUSTICE AND THE
ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

I. INTRODUCTION

1. The United States Department of Justice (DOJ) and the Orange County District Attorney ("District Attorney") (collectively, the "Parties") are committed to upholding the constitutional rights of individuals incarcerated at the Orange County Jails ("Jails"), protecting public safety, and strengthening public trust in the criminal justice system. To further these goals, the Parties enter into this Agreement for the Sustainability of Custodial Informant Reforms ("Agreement") to ensure that the use of custodial informants protects criminal defendants' right to counsel under the Sixth Amendment and right to due process of law under the Fourteenth Amendment.
2. To achieve the Parties' mutual goals, the District Attorney agrees to implement the measures outlined in Section IV, below, at the Orange County District Attorney's Office (OCDA) to enhance and sustain reforms on custodial informants. The measures are related to: (a) policies and procedures; (b) training; (c) document and information systems; and (d) audits and stakeholder engagement.
3. This Agreement is the result of extensive cooperation and consultation between the Parties and builds on reforms undertaken by the District Attorney at OCDA. The Parties also considered the views and recommendations of community members and other stakeholders. The Parties agree that the form and content of this Agreement represents the most appropriate resolution of DOJ's civil investigation into the use of custodial informants based on numerous factors and the particular circumstances of this matter. These factors include the level of cooperation from the District Attorney, the proactive measures the District Attorney has taken to reform policies and practices (including suspending the use of custodial informants without the express, prior approval of the District Attorney), and the narrow scope of the remaining enhancements and sustainability measures needed to address DOJ's investigative findings. Through this Agreement, the Parties intend to ensure the federal constitutional rights of individuals in Orange County, preserve limited public resources, and avoid the costs and risks of litigation.

II. BACKGROUND

4. On December 15, 2016, DOJ initiated an investigation into the use of custodial informants to determine whether OCDA and the Orange County Sheriff's Department (OCSD) engage in a pattern or practice of unconstitutional conduct under the Sixth and Fourteenth Amendments of the United States Constitution in violation of the Violent Crime Control and Law Enforcement Act of 1994, 34 U.S.C. § 12601 ("Section 12601"). Specifically, the investigation focused on whether OCDA and OCSD used custodial informants to elicit incriminating statements from individuals after they had been charged with a crime, in violation of the Sixth Amendment. The investigation also focused on

whether OCDA made disclosures to defendants about the custodial informants that were required by the Fourteenth Amendment.

5. As part of its investigation, DOJ conducted a comprehensive assessment of jail records, case files, and court documents. DOJ also toured the Jails and interviewed OCSD personnel and OCDA prosecutors. DOJ also obtained information from members of the Orange County community and other stakeholders involved in the County's criminal justice system.
6. The District Attorney cooperated at all times during the investigation and provided access to documents, facilities, and personnel.
7. On October 7, 2022, DOJ announced the results of its investigation in a findings report. DOJ determined that it had reasonable cause to believe that OCDA and OCSD had used custodial informants between 2007 and 2016 to elicit incriminating statements from people who had been arrested, after those individuals had been charged with a crime in violation of the Sixth Amendment. DOJ also determined it had reasonable cause to believe that OCDA prosecutors had failed to disclose evidence about those custodial informants to criminal defendants in violation of the Fourteenth Amendment during that same period.
8. The Parties agree that sustaining initiated reforms is necessary to address DOJ's investigative findings and ensure that custodial informants are used in accordance with the Sixth and Fourteenth Amendments. The Parties also agree that the effective, timely, and transparent implementation of this Agreement will promote public safety and strengthen the public's trust in the Orange County criminal justice system. The Parties agree that substantial and effective compliance with this Agreement is the most effective and efficient means of improving and sustaining reforms to satisfy and resolve DOJ's investigative findings.
9. This Agreement shall constitute the entire integrated agreement of the Parties. No prior drafts or prior or contemporaneous communications, oral or written, shall be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding, except for DOJ's October 7, 2022, report of investigative findings to the extent the report is relevant for purposes of determining the meaning of any provision of this Agreement.
10. This Agreement is binding for its duration upon each party hereto, by and through their officials, agents, employees, and successors, where permitted by law. This Agreement is not intended to limit or expand the right of any person or organization to seek relief against the District Attorney or OCDA, or any official or employee thereof, for their conduct or the conduct of OCDA personnel; accordingly, it does not alter legal standards governing any such claims by third parties, including those arising from state or federal law.

III. DEFINITIONS

11. For purposes of this Agreement, the following definitions apply:

- a. “DOJ” means the United States Department of Justice’s Civil Rights Division and its agents and employees.
- b. “OCDA” means the Orange County District Attorney’s Office, including its prosecutors, agents, officers and employees.
- c. “OCSD” means the Orange County Sheriff’s Department, including its deputies, agents, officers, and employees (sworn and unsworn).
- d. “Custodial Informant” means a person other than a co-defendant, percipient witness, accomplice or co-conspirator whose statements are based upon statements made by the defendant while both the defendant and the Custodial Informant were held within a correctional institution.
- e. “Effective Date” means the date the Agreement is fully executed by the Parties.
- f. “Implement” or “Implementation” means the putting into place a policy or procedure, including the appropriate training of all relevant personnel, and the consistent and verified performance of that policy or procedure.
- g. “Including” means “including, but not limited to.”
- h. “Source of Information” or “SOI” means an incarcerated person who provides information to OCSD regarding criminal activity, or any non-criminal activity related to jail security; but has not been directed to do so by law enforcement, and, upon providing such information, the incarcerated person has not requested nor been offered, nor received any benefit or consideration in return for the information. A SOI is not a Custodial Informant, a victim or potential suspect.

IV. ENHANCEMENT AND SUSTAINABILITY MEASURES

12. The District Attorney agrees to enhance and sustain reforms by taking the measures outlined below at OCDA to ensure that the use of any Custodial Informant in a criminal investigation or prosecution protects the federal constitutional rights of criminal defendants in the County’s custody. The measures are intended to ensure that relevant personnel have the guidance, training, and tools they need to carry out the required improvements; that document and information systems support secure and reliable record keeping; and that agency responsibilities are coordinated to facilitate the appropriate sharing of information.

A. OCDA Policies and Procedures

1. General requirements

13. OCDA shall continue to implement policies and procedures that fully incorporate the terms of this Agreement and comply with applicable law. OCDA policies and procedures shall continue to be plainly written, be logically organized, use terms that are clearly defined, and comport with legal and professional custodial and prosecutorial standards and rules.
14. OCDA shall review each policy or procedure related to this Agreement at least one year after it is implemented and at least annually thereafter, to ensure that the policy or procedure provides effective direction to OCDA personnel and remains consistent with this Agreement and current law. In addition to at least annual reviews, OCDA shall review and revise policies and procedures as necessary and appropriate upon notice of a significant policy deficiency from audits or supervisory reviews.
15. OCDA shall ensure that changes in case law, statutes, or rules of professional conduct that are relevant to any use of Custodial Informants are disseminated to appropriate OCDA personnel in a timely manner and incorporated, as needed, into OCDA policies, procedures, and training.
16. OCDA shall document that all relevant personnel have received, read, and understand the policies and procedures that are necessary to fulfill their duties and responsibilities under this Agreement. OCDA shall advise relevant personnel that taking law enforcement or prosecutorial action in violation of approved policies and procedures may subject personnel to discipline, possible criminal prosecution, civil liability, and/or professional sanctions.
17. OCDA shall ensure that appropriate action is taken in response to alleged and sustained violations of relevant policies and procedures, including initiating supervisory reviews or investigations, imposing discipline, and taking other non-punitive corrective action, such as providing remedial training or increasing supervision.
18. OCDA agrees to submit proposed changes to relevant policies, procedures, protocols, manuals, training materials, and any other administrative orders, directives, and bulletins related to this Agreement to DOJ for review and commentary for the duration of the Agreement.

2. Specific requirements

19. OCDA shall continue to implement integrated, consistent, and comprehensive policies and procedures addressing the use and disclosure of Custodial Informants consistent with the Sixth and Fourteenth Amendments and applicable rules of professional conduct. The policies and procedures shall continue to address the following issues:

- a. constitutional, legal, and professional responsibility requirements regarding the use of Custodial Informants and Sources of Information at the Jails;
 - b. definitions of Custodial Informants, Sources of Information at the Jails, and benefits offered to or received by Custodial Informants (including benefits in a custodial setting);
 - c. screening and vetting of potential Custodial Informants and Sources of Information identified by OCSD from the Jails;
 - d. records and other documentation that must be created and maintained when Custodial Informants and Sources of Information at the Jails are used in a criminal investigation or prosecution;
 - e. matching individuals in Orange County Index of Confidential Sources (OCICS) and OCDA's case management system and notification to case prosecutors and supervisors;
 - f. disclosure obligations for testifying and non-testifying Custodial Informants;
 - g. the scope of the "prosecution team;" and
 - h. the duty to locate and preserve material possessed by OCSD for production to OCDA to determine whether disclosure to a criminal defendant may be required by *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny.
20. OCDA policies and procedures shall continue to encompass any situation reported to OCDA by OCSD in which an individual incarcerated at the Jails qualifies as a Custodial Informant or a Source of Information. OCDA policies and procedures shall continue to employ a consistent approach to documentation, record preservation, coordination, and communication, as appropriate, in any instance in which an individual in custody who is identified to the OCDA qualifies as a Custodial Informant or Source of Information.
21. OCDA shall continue to implement policies and procedures to identify all cases involving criminal defendants in which a witness has a current or prior relationship with law enforcement as a Custodial Informant or Source of Information at the Jails. The policies and procedures shall continue to require that prosecutors ascertain whether evidence exists in cases involving Custodial Informants and Sources of Information at the Jails that must be disclosed under the Sixth and Fourteenth Amendments. The policies and procedures shall provide that prosecutors make legally required disclosures to the defense as early as possible. Convictions tainted by violations of the policies and procedures shall be addressed by OCDA timely and appropriately.

22. OCDA shall continue to implement policies and procedures on the responsibilities of OCDA supervisors regarding legally required disclosures to the defense and the use of Custodial Informants and Sources of Information at the Jails. OCDA shall hold supervisors accountable for the quality of their supervision of prosecutors' compliance with the Sixth and Fourteenth Amendments.
23. OCDA shall continue to implement policies and procedures that require prosecutors to notify immediately their supervisor when prosecutors become aware that a potential Custodial Informant has come forward to offer information to OCDA or other law enforcement agency. The policies and procedures shall continue to require prosecutors to direct all cases, issues, and questions regarding the use of Custodial Informants to the Cooperating Informant Review Committee (CIRC). CIRC shall be made up of the District Attorney, senior leadership and supervisors from OCDA, and OCICS Coordinator. The policies and procedures shall also continue to require the approval of the District Attorney through CIRC prior to the use of a Custodial Informant at the Jails in any criminal proceeding including but not limited to preliminary hearings, grand jury proceedings, pretrial hearings, or trial. If a prosecutor elects not to seek permission from CIRC to use a Custodial Informant, the prosecutor shall notify the Court and the criminal defendant's counsel in writing that they will not use the informant even if the criminal defendant elects to proceed to trial. All CIRC decisions regarding the use of Custodial Informants shall be documented in an auditable form.
24. OCDA shall continue to implement policies and procedures that require the Conviction Integrity Unit, made up of senior staff, to review cases when there are claims of factual innocence or wrongful conviction, including alleged violations of the Sixth and Fourteenth Amendments. The Conviction Integrity Unit shall continue to operate as a stand-alone unit of OCDA that reports directly to the OCDA executive management team. The Conviction Integrity Unit shall accept cases for review from prosecutors, other law enforcement agencies, defense attorneys, and criminal defendants. The Conviction Integrity Unit shall screen all applications for case reviews and investigate eligible claims, as appropriate. The findings of the completed investigation shall be reported to the Conviction Review Committee. The Conviction Review Committee shall be made up of senior leadership of OCDA and a member of the criminal defense bar in good standing or a former judicial officer. All decisions about disclosure and case resolution by the Conviction Review Committee shall be documented in writing.
25. OCDA shall continue to implement policies and procedures on the transfer of cases from one prosecutor to another that require the transferring prosecutor to submit a formal memorandum in qualifying cases detailing case status, disclosures made to the defense, any contemplated use of Custodial Informants or Sources of Information at the Jails, and any discussions with defense counsel about possible settlement. The cases that require a transfer memorandum include the prosecution of a felony case assigned to the felony panel or a vertical unit; the prosecution of any case involving the actual or contemplated use of a Custodial Informant; or the prosecution of a case involving a violation of the law alleged to have been committed within the Jails and which involved an inmate witness, including but not limited to, a Source of Information.

26. The District Attorney agrees to implement the terms of a memorandum of understanding between OCDA and OCSD to facilitate the collaboration and information sharing necessary to ensure that Custodial Informants and Sources of Information at the Jails are used consistent with the Sixth and Fourteenth Amendments. As part of the memorandum, OCDA personnel shall take the following steps, consistent with OCDA policies:
- a. notify OCSD in writing when OCDA discovers that a Source of Information submitted by OCSD matches the identity of an individual who has already been entered in OCICS based on a submission by another law enforcement agency;
 - b. notify OCSD in writing when a proposed Custodial Informant is approved through CIRC, including when OCDA makes eligibility determinations and approves the use of Custodial Informants under exigent circumstances; and
 - c. coordinate discovery requests and productions with OCSD, including those circumstances when pertinent OCDA personnel shall personally inspect OCSD records and files.
27. The District Attorney agrees to complete a comprehensive historical case review to identify and review prior investigations and prosecutions involving Custodial Informants or Sources of Information at the Jails to determine whether any remedial or corrective action is necessary under the Sixth and Fourteenth Amendments. The historical case review shall assist OCDA to identify all information that must be disclosed to criminal defendants and ensure that OCDA has complete records of past Custodial Informant activity at the Jails. The review shall encompass all Custodial Informant activity at the Jails based on OCSD and OCDA records, including information obtained from OCSD's Special Handling Log; TRED and other classification records; housing histories for Custodial Informants and investigative targets at the Jails; and OCDA and OCSD reports, memoranda, and case files related to Custodial Informants and Sources of Information at the Jails. If OCDA learns of materials relevant to their review that are no longer in existence, they should document what materials are missing, the reason that they are missing, and what efforts the agencies made to obtain the materials.
28. OCDA agrees to continue using a reliable methodology to complete each project of the historical case review. The OCDA's methodology for identifying prior investigations and prosecutions involving Custodial Informants will include the following: (a) an analysis of the OCSD Special Handling Log to identify prior Custodial Informant activity, the identity of the Custodial Informant(s) and target(s); (b) an analysis of prosecutions identified by OCDA in prior case reviews for Custodial Informants; (c) an analysis of records of Sources of Information at the Jails provided by OCSD for the period of 2015 through 2022 and any associated prosecutions; and (d) an analysis of any cases involving a potential Custodial Informant that is learned through the intake process of OCDA's Conviction Integrity Unit. OCDA shall notify DOJ when it has completed each historical case review project for the duration of the Agreement. OCDA agrees to provide access to underlying materials in the historical case review to DOJ consistent with this Agreement

to evaluate the results of each project; determine whether corrective action was taken in a specific prosecution case, if warranted; and determine whether corrective action was taken to improve policies, procedures, and practices at OCDA, if warranted.

B. OCDA Training

29. OCDA shall implement a training program that includes Custodial Informants, Sources of Information at the Jails, *Brady*, and *Massiah* that reflect the policies of OCDA. The training program shall incorporate adult learning methods, written curricula, and mechanisms for obtaining feedback from trainees on the quality of the trainings in accordance with generally accepted training practices. OCDA shall provide training on *Brady* and *Massiah* to prosecutors, investigators, and other relevant personnel who are hired after the Effective Date within the first year of hire. OCDA shall provide training on *Brady* and *Massiah* to all prosecutors, investigators, and other relevant personnel every three years consistent with the Minimum Continuing Legal Education cycle in California. OCDA shall review and reconcile its training curricula on *Brady* and *Massiah* with OCSD before any training occurs.
30. As part of its training program, OCDA shall implement training on the proper maintenance of case files involving Custodial Informants and Sources of Information at the Jails and the transfer of cases from one prosecutor to another that is consistent with approved policies and procedures. The training shall also cover the information and materials that must be maintained in OCICS.
31. OCDA shall implement training for supervisors as part of its training program that reflects its policies and procedures on Custodial Informants and Sources of Information at the Jails. OCDA shall provide comprehensive training to new supervisors and annual in-service training to existing supervisors.

C. OCDA Document and Information Systems

32. OCDA shall develop and implement policies and procedures on the proper organization and content of case records involving Custodial Informants and Sources of Information. The policies and procedures shall provide that all required information and materials for a case in the possession of prosecutors, investigators, paralegals, and support staff must be maintained in the case file and stored in OCICS. The policies and procedures shall require that case files and OCICS include documentation of all instances in which OCDA learns of an individual in custody that qualifies as a Custodial Informant or Source of Information in an investigation or prosecution, any information that the individual provides, any benefits that the individual seeks or receives, and all information in the possession of the prosecution team bearing on the individual's reliability or credibility. The policies and procedures shall also require prosecutors to document all decisions regarding disclosure to the defense and to maintain a copy of all disclosures made to the defense.

33. OCDA shall develop or acquire an updated electronic case management system with the assistance of a capable information technology entity to securely maintain and preserve all OCDA case files in digital format that is consistent with approved OCDA policies and procedures. OCDA's comprehensive, agency-wide needs assessment shall inform OCDA's decision to develop or acquire its case management system. The electronic case management system shall permit OCDA to match identities of individuals with records in OCICS of Custodial Informants and Sources of Information at the Jails. Substantial compliance with this paragraph shall require that OCDA demonstrate a future state capacity to implement the terms of this paragraph and shall not require implementation of the updated electronic case management system. Accordingly, OCDA agrees to provide access to DOJ to any relevant requirements list, solicitation document, contract material (such as a statement of work), or project charter as proof of practice of its future state capacity.
34. OCDA shall replace the Orange County Informant Index with OCICS to improve OCDA's capability to store, search, retrieve, and share records on informants and Sources of Information in a secure, efficient, and effective manner. OCICS shall facilitate information sharing and joint auditing with OCSJ to ensure that cases and witnesses are effectively identified and matched to assist OCDA prosecutors in meeting their disclosure obligations under the Sixth and Fourteenth Amendments. A coordinator from OCDA shall be responsible for operating and maintaining OCICS.
35. All Custodial Informants and Sources of Information at the Jails that have been identified to the OCDA shall be entered in OCICS. Entry into OCICS shall not depend on the testimony of the Custodial Informant or Source of Information. Entry shall be required whenever a member of the OCDA learns that a Custodial Informant or Source of Information is involved in an investigation, including cases that are not filed and prosecutions where the information is not used.

D. Audits and Stakeholder Engagement

36. OCDA shall continue to implement regular audits of OCDA case files on Custodial Informants and Sources of Information at the Jails to determine compliance with relevant policies and procedures. The OCDA audits shall take place on at least an annual basis. Errors or other significant findings revealed by the audits shall be documented and corrected promptly.
37. OCDA shall continue to implement regular audits of OCICS records to determine whether OCDA has consistently updated the records with required entries and materials in accordance with relevant policies and procedures. Errors or other significant findings revealed by the audits shall be documented and corrected promptly. OCDA agrees to send proposed changes to its methodology for audits required by this Agreement to DOJ for review and approval.

38. OCDA shall continue to participate in joint audits with OCSD to ensure records on Custodial Informants and Sources of Information at the Jails are complete and consistent across the agencies. Errors or other significant findings revealed by the audits shall be documented and corrected promptly. The joint audits shall take place on at least an annual basis. OCDA agrees to submit completed joint audits and the methodology applied to each audit to DOJ for review and comment.
39. OCDA agrees to convene at least one stakeholder meeting in consultation with DOJ by inviting selected representatives of the Orange County Superior Court, the Orange County Sheriff's Department, the Public Defender's Office, and the private criminal defense bar to discuss changes to policies, training, and practices related to this Agreement. The participation of the representatives in this stakeholder meeting is voluntary. OCDA shall solicit feedback from the participants of the meeting and will consider additional changes and improvements, as necessary, to further the objectives of this Agreement.

V. IMPLEMENTATION, COMPLIANCE ASSESSMENTS, AND ENFORCEMENT

A. Compliance Coordinator

40. Within 45 days of the Effective Date, the District Attorney shall designate a compliance coordinator at OCDA to facilitate compliance with this Agreement. The compliance coordinator shall oversee and coordinate compliance and implementation activities; facilitate the provision of data, documents, materials, and access to personnel to DOJ, as needed; ensure that all data, documents and records are maintained as provided in this Agreement; and assist in assigning implementation and compliance tasks to personnel, as directed by the District Attorney or his designee. The compliance coordinator shall possess exceptional organizational and management skills to ensure effective and timely implementation of this Agreement.

B. Compliance Assessments

41. DOJ agrees to assess whether the requirements of this Agreement have been implemented, and whether this implementation is resulting in the constitutional use and disclosure to criminal defendants of Custodial Informants and Sources of Information at the Jails. As part of its compliance assessments, DOJ agrees to identify and address barriers to compliance and provide recommendations to OCDA to overcome barriers and achieve substantial compliance with this Agreement. DOJ's compliance assessments and recommendations under this Agreement shall not, and are not intended to, replace or assume the role and duties of the District Attorney or any official or employee of OCDA.
42. DOJ agrees to conduct a baseline compliance assessment within six months of the Effective Date and to conduct compliance assessments at least annually thereafter, unless the Parties agree to a different timetable for specific provisions of the Agreement. Except for Paragraph 33, above, substantial compliance requires that the District Attorney and

OCDA: (a) have incorporated the requirements into policy; (b) have trained all relevant personnel as necessary to fulfill their responsibilities pursuant to the requirements; and (c) are consistently following and holding OCDA personnel to the requirements and standards enunciated herein. Compliance assessments will contain the elements necessary for reliability and comprehensiveness and shall include both quantitative and qualitative assessments. Compliance assessments may be conducted using sampling and compilation data where appropriate. DOJ shall not be liable for any claim, lawsuit, or demand arising out of the compliance assessments conducted pursuant to this Agreement brought by non-parties to this Agreement.

43. DOJ agrees to prepare public, written reports at least annually that include the following:

- a. description of the work conducted by DOJ during the assessment period;
- b. list of each Agreement requirement, indicating which requirements have been:
 - i. incorporated into policy;
 - ii. the subject of sufficient training for all relevant OCDA personnel; and
 - iii. carried out in actual practice. DOJ will detail what criteria has been used to determine whether the requirement has been carried out in actual practice.
- c. the methodology and specific findings for each compliance evaluation conducted during that review period. The underlying data for each compliance evaluation will be confidential and not publicly available but will be retained by DOJ and provided to the District Attorney and OCDA upon request;
- d. for any requirements that were evaluated and found not to have been implemented, DOJ's recommendations regarding necessary steps to achieve compliance; and
- e. a projection of the work to be completed during the upcoming evaluation period and any anticipated challenges or concerns related to compliance with this Agreement.

44. DOJ agrees to submit compliance assessment reports in draft form to OCDA for review and comment at least fifteen calendar days before the reports are issued in final form and released publicly. DOJ agrees to include OCDA's written response to any final compliance assessment report as an appendix to the report, if requested by OCDA.

C. Communication Between the Parties

45. The Parties agree to maintain regular contact to ensure effective and timely communication regarding the implementation and compliance assessment of this Agreement. To facilitate this communication, the Parties agree to hold at least monthly conferences.

D. Access and Confidentiality

46. DOJ shall have timely, full, and direct access to all OCDA personnel, facilities, trainings, meetings, records, case files, information systems, and audits to the extent they are relevant to the implementation of this Agreement and provided such access is not prohibited by court order nor statute nor protected by privilege. DOJ shall also have access to attend and observe Conviction Review Committee case reviews.
47. The District Attorney and OCDA shall ensure that DOJ has full and direct access to all OCDA documents and data related to the Agreement, except any documents or data the provision of which is prohibited by court order or statute or is protected by privilege. Privilege may not be used to prevent DOJ from observing case review meetings or other compliance-related activities, other than meetings with County lawyers in anticipation of litigation or for litigation. Should the District Attorney or OCDA decline to provide DOJ with access to documents or data based on privilege, court order, or the law, the District Attorney or OCDA shall inform DOJ that it is withholding documents or data on this basis, and will provide DOJ with a log describing the documents or data and the basis of the withholding.
48. DOJ agrees to provide the District Attorney and OCDA with reasonable notice of a request for copies of documents. Upon such request, the District Attorney and OCDA shall provide copies in a timely manner (electronic, where readily available) of the requested documents to DOJ, unless withheld as required by court order, statute, or as privilege.
49. To facilitate its work, DOJ may conduct on-site visits and assessments at the OCDA. It is expected that such on-site visits will be used sparingly and will be done in a manner which reduces the disruption to OCDA and minimizes costs.
50. DOJ shall maintain all non-public information provided by the District Attorney and OCDA in a confidential manner. Other than as expressly provided in this Agreement, this Agreement will not be deemed a waiver of any privilege or right the District Attorney, OCDA, and/or any other individuals or groups may assert, including those recognized at common law or created by statute, rule, or regulation, against any other person or entity with respect to the disclosure of any document.

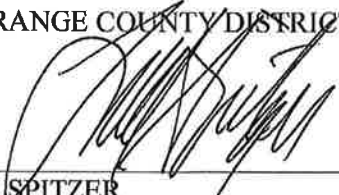
E. Modification, Enforcement, and Termination of this Agreement

51. The Parties may jointly agree to make changes, modifications, and amendments to this Agreement. Such changes, modifications, and amendments shall be encouraged when the Parties agree that an Agreement provision as drafted is not furthering the purpose of this Agreement or that there is a preferable alternative that will achieve the same purpose. Where the Parties are uncertain whether a change to this Agreement is advisable, the Parties may agree to suspend the current Agreement requirement for a time period agreed upon at the outset of the suspension. During this suspension, the Parties may agree to temporarily utilize an alternative requirement. DOJ shall assess whether the suspension of the requirement, and the use of any alternative provision, is as effective, or more effective at achieving the purpose as was the original or current Agreement requirement, and the Parties will consider this assessment in determining whether to jointly stipulate to make the suggested change, modification, or amendment.
52. The Parties agree to defend the provisions of this Agreement including in collective bargaining and any other matter relating to the Agreement. The Parties will notify each other of any court, union, or administrative challenge to this Agreement.
53. The District Attorney and OCDA shall require compliance with this Agreement by their respective officers, employees, agencies, assigns, or successors, where permitted by law.
54. DOJ acknowledges the good faith of the District Attorney and OCDA in sustaining the reforms that are needed to protect against the misuse of Custodial Informants in Orange County. DOJ, however, reserves its right to seek an appropriate remedy, including initiating a civil action in the United States District Court under Section 12601, if it determines it has reasonable cause to believe that the District Attorney or OCDA is engaging in a pattern or practice of conduct that deprives persons of rights, privileges or immunities secured or protected by the Constitution or laws of the United States. DOJ will consult with the District Attorney and OCDA before instituting enforcement proceedings or other litigation. Nothing in this Agreement constitutes any admission, concession, or agreement by the District Attorney or OCDA that DOJ has jurisdiction or authority to investigate or seek remedy against the District Attorney or OCDA regarding its use of Custodial Informants under Section 12601, nor a concession by DOJ that it does not have such jurisdiction or authority.
55. Unless stated otherwise in this Agreement, if either Party disagrees with any aspect of implementation, including any policies, procedures, protocols, manuals, training materials, and other administrative orders or directives created or revised in furtherance of this Agreement, that Party will engage in good faith consultation with the other Party to attempt to resolve the disagreement.
56. This Agreement is enforceable only by the Parties. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, arbitral, or administrative action. Accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement.

57. This Agreement does not expand, nor will it be construed to expand, access to any OCDA or DOJ documents, except as expressly provided by this Agreement, by persons or entities other than the Parties.
58. This Agreement will terminate fully when the Parties agree that the District Attorney and OCDA have achieved substantial compliance with the provisions of the Agreement and sustained that substantial compliance for twelve consecutive months, based on DOJ's compliance assessments. The Parties may also consider partial termination of any subsection in Section IV prior to full termination, provided that the District Attorney and OCDA have sustained substantial compliance with all requirements of the subsection for twelve consecutive months, based on DOJ's compliance assessments.
59. If the Parties disagree whether the District Attorney and OCDA have achieved substantial and sustained compliance with the provisions of the Agreement, the District Attorney and OCDA may seek to terminate this Agreement. The District Attorney and OCDA agree to notify DOJ in writing when they have determined that they are in substantial and sustained compliance with the Agreement, and will document the basis for their position. Thereafter, the Parties will promptly confer as to the status of compliance, and DOJ may elect to conduct reasonable assessments in response to the District Attorney's and OCDA's assertion, including on-site observations, document reviews, or interviews with OCDA personnel.

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For ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE:

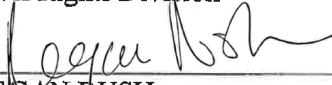


TODD SPITZER
District Attorney
Orange County, California

Executed on this 9th day of January, 2025.

For UNITED STATES DEPARTMENT OF JUSTICE:



KRISTEN CLARKE
Assistant Attorney General
Civil Rights Division

MEGAN RUSH
Chief
PAUL KILLEBREW
Deputy Chief
PATRICK KENT
LUIS E. SAUCEDO
Trial Attorneys
Special Litigation Section

Executed on this 14th day of January, 2025.