



Homeland
Security

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MEMORANDUM FOR: DIRECTORS, FIELD OPERATIONS
ACTING DIRECTOR, PRE-CLEARANCE OPERATIONS
SPECIAL AGENTS IN CHARGE
ATTACHÉS (b) (6), (b) (7)(C)

FROM: Assistant Commissioner
Office of Field Operations
U.S. Customs and Border Protection
(b)(6); (b)(7)(c)

Director
Office of Investigations
U.S. Immigration and Customs Enforcement

SUBJECT: Coordination Efforts Between U.S. Customs and Border
Protection, Office of Field Operations and U.S. Immigration
and Customs Enforcement, Office of Investigations

The creation of the Department of Homeland Security (DHS) unified the agencies responsible for protecting our Nation's borders and enforcing our laws under a single department, providing cohesive and coherent authority and direction. Within DHS, border enforcement responsibilities rest with the U.S. Customs and Border Protection (CBP) and the U.S. Immigration and Customs Enforcement (ICE). It is essential that our officers from CBP/Office of Field Operations (OFO) and agents from ICE/Office of Investigations (OI) communicate effectively to harmonize enforcement efforts to protect the American homeland.

In an effort to establish a foundation of our mutual coordination we have collectively recognized that OI is the investigative arm for OFO and the primary contact for investigative matters; and OFO is primarily responsible for the operational activities and interdictions within the ports of entry.

In order to strengthen our commitment to effectively coordinate our border enforcement activities, a joint CBP/OFO – ICE/OI Working Group has been established. This Working Group meets quarterly to promote ongoing dialogue and resolution of issues that impact our agencies. The Working Group is comprised of the following members:

- (b)(6); (b)(7)(c) (Co-Chair) – Director, Field Operations (DFO), Miami
- (b)(6); (b)(7)(c) (Co-Chair) – Special Agent in Charge (SAC), Seattle
- (b)(6); (b)(7)(c) - DFO, Atlanta
- (b)(6); (b)(7)(c). DFO, El Paso
- (b)(6); (b)(7)(c)- SAC, New York
- (b)(6); (b)(7)(c) . SAC, Newark
- (b)(6); (b)(7)(c)I – Acting Deputy Director, Office of Investigations
- (b)(6); (b)(7)(c). ICE/OI Liaison to CBP
- (b)(6); (b)(7)(c). Program Manager, Office of Field Operations

The following guiding principles governing ongoing interactions between OFO and OI will assist in coordination and clarifying roles and responsibilities:

National Policy Coordination:

We have agreed that an executive level review (personnel from CBP and ICE) will be established at the Headquarters (HQ) level to allow for proper review on policy issues significantly impacting both ICE and CBP. This executive level review will act as a conduit to provide the affected agency with information on proposed changes and an opportunity to provide meaningful input.

Action Item: HQ OFO and OI will separately issue a memorandum to their HQ senior management notifying them of this coordination policy. Due by January 13, 2006.

Joint Terrorism Task Force (JTTF):

We have agreed that both OFO and OI play important complimentary roles within the Joint Terrorism Task Force. It was further agreed that the roles and responsibilities of our participants should be clarified.

Action Item: A CBP JTTF conference convened on December 6, 2005. The focus of the JTTF conference was to define operational roles and responsibilities for the CBP representative within the JTTF Program. As part of this conference, a CBP National directive will be developed providing operational guidance, which will be completed by February 1, 2006. As part of this conference, OI provided a presentation regarding its role within the Joint Terrorism Task Force. The national directive will be coordinated with OI prior to issuance.

Sharing of Information/Intelligence

We recognize that there are existing examples of effective information sharing between our agencies (locally), either through a known intelligence group (Intelligence Collection and Analysis Team, "ICATS") or through other innovative intelligence entities. It was further agreed that the DFOs and SACs would have discretion to determine their local operational requirements and necessities; allowing officials to actively pursue and develop joint intelligence initiatives.

Action Item: Pending National Intelligence sharing directives and/or ongoing DHS-wide intelligence initiatives, Field Offices (DFO/SAC level) should continue to work jointly to develop processes and procedures to improve information sharing and intelligence activities.

Third Party Rule:

The Disclosure Branch within the Office of Regulations and Rulings (OR&R)/CBP provided the Working Group with vital information regarding the sharing of information. OR&R determined that any entity under the umbrella of DHS is not considered a third-party agency, thus allowing our organizations (CBP and ICE) to share information/intelligence on a "need to know basis." The only exception is the European Union (EU) Passenger Name Record (PNR) reservation data. The International agreement with the EU stipulates that CBP has been established as the primary receiver of EU information. ICE and all other entities under the umbrella of DHS will be considered a third party when sharing EU PNR reservation data, which can be shared through third party rule procedures. All other PNR information (except EU information) would not be subject to these guidelines.

Action Item: Field Offices (DFO-SAC level) will advise their staff accordingly by January 13, 2006.

Controlled Deliveries/Pass-Throughs (Commercial Goods/Merchandise):

The policy governing pass-throughs and controlled deliveries of commercial goods/merchandise does not reflect the current working environment. It is recommended that the policy be updated to reflect the current working environment and technology improvements. OI assumes responsibility for any and all events or incidents arising from such controlled deliveries and pass throughs.

Action Item: An HQ group has been working on this issue and is actively coordinating with the Office of Investigations. The CBP/OFO – ICE/OI Working Group has provided the HQ group with agreed upon recommendations that will assist in implementing coordination goals. It is anticipated that the final policy directive will be implemented by January 31, 2006.

CBP Officer Enforcement (E):

OI supports the current scope of duties for the CBPO (Es), identifying and processing criminal prosecutions and administrative cases involving the Immigration and Nationality Act. It has been agreed that CBPO (Es) will continue their current duties in enforcing the provisions of Titles 8 and 18 of the USC within the ports of entry. CBPO (Es) will also notify OI upon identification of a criminal prosecution or an administrative case, which has the potential to be developed by OI into a more complex, criminal investigation involving additional violations, co-conspirators, foreign leads, asset forfeiture, etc. OI will have the lead for investigations they accept from OFO.

We also recognize the complexity and myriad of issues involved with CBPO (Es) expanding towards Title 21 prosecutions (importation of controlled substances) within the ports of entry. Several locations have been selected to assign CBP Officers to shadow OI agents responding to Title 21 criminal cases at the ports of entry.

Action Item: Implement program for CBP Officers to be assigned with ICE/OI through the arrest and prosecution process for the importation of controlled substances.

- The following locations have been selected to assign CBP Officers to work with OI agents responding to and becoming familiar with the process. The DFO, Miami will develop operational criteria to measure the impact and operational feasibility of the program by January 13, 2006. The evaluation will run for ninety days upon approval of the operational criteria.
 - Miami (MIA), Florida
 - San Ysidro, California
 - Blaine, Washington
 - New York (JFK), New York
 - Brownsville, Texas

Presence of CBP Officers During Interviews:

We recognize that prosecutorial value can be added by having CBP Officers present in defendant debriefings (i.e., subject matter experts and nexus to the immediate crime). It is understood that certain difficulties may arise with multiple participants present during defendant debriefings. Among the potential difficulties encountered are: Dominant police presence, discovery issues related to note taking and report writing, and resistance from the U.S. Attorney's Office.

Action Item: Where practical and appropriate, every effort will be made for CBP Officers to participate in the interview process. In consideration of local prosecutorial guidelines, investigative strategies and sensitivities, it is recognized that OI will maintain operational authority over participation in the interview process. If CBP Officers are not involved with the interview, OI will provide a briefing to the Supervisory CBP Officer as appropriate.

Feedback:

We recognize that frequent and regular communication between OFO and OI in the field is essential to maintaining effective working relationships. It is especially important that when one agency receives information or support from the other, that the receiving agency provide feedback to the originating agency about enforcement actions that resulted from the information or support. As such, results of investigations, controlled deliveries, prosecutions, secondary examinations, penalties, etc., should be communicated regularly between OFO and OI.

Action Item: SACs and DFOs will meet and develop a local feedback action plan by January 31, 2006, that will ensure that enforcement results are routinely and effectively shared between OFO and OI in their respective areas of operation.

In Closing:

This joint memorandum serves as another step toward more effective coordination and communication between our agencies. It is our consensus that the discussions were of value to both organizations and that these results should be communicated to the Field for full consideration. DFOs and SACs are encouraged to discuss this joint memorandum and make any operational adjustments in order to comply with the provisions of this document. And at future DFO and SAC Conferences, selected DFOs and SACs will discuss ongoing best practices and cooperative efforts. The next scheduled DFO-SAC Working Group discussion will be held in December 2005 and prior to the meeting a request for either new agenda items or questions prompted by this joint memorandum will be sent to DFOs and SACs.