



Homeland Security

May 10, 2006

MEMORANDUM FOR: See Distribution List

FROM: Acting Commissioner for Customs and Border Protection (b) (6), (b) (7)(C)

Assistant Secretary for Immigration and Customs Enforcement (b) (6), (b) (7)(C)

SUBJECT: Guidance on Referral Coordination for U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement

This memorandum clarifies guidance and responsibilities related to U.S. Customs and Border Protection (CBP) coordination with U.S. Immigration and Customs Enforcement (ICE) on referral matters, and serves as a reminder to field components of the current policies' key aspects for both CBP's Office of Field Operations (OFO) and CBP's Office of Border Patrol (OBP) with ICE's Office of Investigations (OI).

CBP and ICE support each other in the various aspects of our enforcement efforts, including the proper referrals of investigative leads and providing the results of those referrals to each other. CBP and ICE field personnel are reminded to find every feasible opportunity at the local level to promote broader cooperation and coordinate efforts on case referrals, and jointly resolve, at the field level, issues as they arise, elevating issues as necessary.

Guidance on Referrals

Currency and Monetary Instruments

- Upon the discovery of currency or monetary instruments in excess of \$10,000, CBP Officers and Agents shall immediately contact the ICE duty agent at the local Special Agent in Charge (SAC) or Resident Agent in Charge (RAC) offices. ICE will be responsible for conducting all follow-up investigations that emanate from currency and monetary instruments seizures, and presenting cases to the United States Attorney's Office (USAO) for prosecution. For those cases accepted for prosecution, or where ICE otherwise requires the currency for evidence, the currency will be processed under existing ICE-CBP procedures. In accordance with current practice and procedure, CBP will be responsible for the forfeiture of all currency and monetary instruments that are seized by both CBP and ICE.

Illegal Drugs

- Upon the seizure of drugs in excess of personal use quantities, CBP Officers and Agents at the ports of entry will immediately contact the ICE duty agent at the local SAC or RAC office for review and, if appropriate, acceptance of the violator and/or property for prosecution/evidence with USAO.

Illegal Drugs

- OBP is currently bound by a Memorandum of Understanding with the Drug Enforcement Administration (DEA) that provides DEA with the right of first refusal with respect to all drug-related apprehensions or seizures. In those cases where DEA accepts an interdiction for follow-up investigation, OBP will notify ICE of the referral. In the event that DEA declines an OBP referral, OBP will contact the ICE duty agent at the local SAC or RAC office and refer the interdiction for investigation. Should ICE decline the referral for further investigation, OBP may present the case to USAO for prosecution and/or refer the case to state or local law enforcement agencies for further review.

Commercial Importation and Exportation Violations

- Upon discovery of documents and/or other commercial cargo violations that may result in an import fraud or export violation investigation, CBP Officers and Agents will refer those cases to ICE for follow-up investigation and possible referral to the Assistant United States Attorney.

National Security Matters

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Gangs

- Upon the arrest of suspected gang members, CBP will immediately contact the ICE duty agent at the local SAC or RAC office for review and, if at a port of entry, acceptance of the violator and/or property for prosecution/evidence with USAO.

Other Referral Issues

- Other interdiction circumstances encountered by CBP that require investigative follow-up will be referred to the ICE duty agent at the local SAC or RAC office. Other circumstances may be subject to other Memoranda of Agreement and include but are not limited to death of an alien, smuggled loads, suspected smugglers, outbound seizures related to criminal export violations, and cross-border tunnels.
- Local notification thresholds and protocols that consider unique operational environments and resources have been developed between local Chief Patrol Agents (CPAs) for the Border Patrol and ICE Office of Investigations' SACs.
- ICE will also transfer seized property and related case documentation to CBP/OFO for secure storage and administrative or judicial case processing by CBP/OFO's Fines Penalties and Forfeitures Officers.
- Both CBP and ICE are committed to working collaboratively along with USAO to determine the best course of action with respect to charging and prosecuting individuals and/or furthering an investigative effort.

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The guidance above is a reminder of existing referral agreements between CBP and ICE. In properly communicating and coordinating referrals, as well as information gained from referrals, CBP and ICE can ensure that interdictions are brought to their logical and most effective conclusion, through proper investigations that can provide broader intelligence. It is vital that at every level, CBP and ICE maximize every opportunity to cooperate and coordinate efforts in pursuit of our common homeland security mission.

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