

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

**ICE Directive 17012.2: Reporting and Investigating Threats and Assaults Against ICE Employees and Facilities**

**Issue Date:** January 29, 2020

**Superseded:** ICE Directive 10712.1: *Reporting and Investigation of Threats and Assaults Against ICE Employees* (June 5, 2018)

**Federal Enterprise Architecture Number:** 306-112-002b

1. **Purpose/Background.** U.S. Immigration and Customs Enforcement (ICE) takes threats and assaults against ICE employees and facilities seriously. This Directive establishes policy for reporting and investigating threats and assaults against ICE employees and their family members that are a result of an employee’s official duties, actions, or employment with ICE.<sup>1</sup> This Directive also applies to threats and acts of destruction against ICE buildings, facilities, property, or equipment.

2. **Policy.** ICE employees must report any known threat or assault directed against them resulting from their official duties, actions, or employment with ICE as well as any known threat or act of destruction against ICE buildings, facilities, property, or equipment. Additionally, ICE employees are encouraged to report threats and assaults against their immediate family members, and other affected individuals associated with an ICE employee at the employee’s discretion. Upon employee notification, supervisors must immediately report and document threats or assaults made against their employees and others as outlined in this Directive.

2.1. **Protective Measures for ICE Employees and their Immediate Family Members.**

ICE will take appropriate measures within its authority to protect ICE employees and their immediate family members. (b)(7)(E)

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Senior Leaders within Homeland Security Investigations (HSI) or the Office of Professional Responsibility (OPR), in consultation with the relevant Special Agent in Charge (SAC) or Attaché, will make an administrative determination as to what protective measures, if any, are necessary on a

<sup>1</sup> This Directive does not pertain to employee-on-employee (i.e., workplace violence) situations and does not affect the Office of Professional Responsibility’s (OPR) authority to investigate threats, assaults, and allegations of criminal and administrative misconduct by ICE employees as defined in ICE Directive 17001.1, *Functions of the Office of Professional Responsibility* (Feb. 3, 2005) (or as updated) and ICE Directive 1048.2, *ICE Lines of Authority* (Mar. 10, 2017) (or as updated).

case-by-case basis.<sup>2</sup> If Senior Leaders are uncertain as to the permissibility of expending appropriated funds for protective measures of ICE employees and their immediate families, they must obtain legal guidance from the Office of the Principal Legal Advisor (OPLA). ICE Directorates and Program Offices shall assume responsibility for expenses related to authorized protective measures on behalf of employees or their immediate family members in their areas of responsibility (AORs). Prior to obligating any funds pursuant to this Section, ICE Directorates and Program Offices shall verify with the Office of the Chief Financial Officer (OCFO) that funding sources identified are appropriate and internal controls are in place, as well as obtain from OCFO funding codes for tracking of costs. If Program Offices encounter exigent circumstances where they are unable to obtain the necessary verification from OCFO in advance and funds must be obligated for the immediate protection of the employee and/or their immediate family members, Program Offices are required to notify OCFO within twenty-four hours of making such obligation.

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<sup>2</sup> ICE employees may refuse to accept a protection detail. If accepted, the protected individual may request termination of their protection detail to the HSI or OPR SAC who has authority over the investigation. The HSI or OPR SAC will make the final determination on whether to terminate the protection detail. DHS Instruction 121-01-018, DHS Executive Security Protection (9/11/2018) applies to all protective details and should be consulted early in the planning process.

**2.3. Investigations.** All reported threats and assaults will be investigated in an expedited manner consistent with procedures outlined in this Directive. OPR will lead investigations of threats and assaults against OPR employees, their immediate family members, and other affected individuals associated with an OPR employee, as appropriate. In addition, OPR will lead investigations of threats and assaults against ICE Senior Leaders and by detainees against ICE employees and contract employees. HSI will lead investigations of threats and assaults against all other ICE employees, their immediate family members, and other affected individuals associated with an ICE employee, as appropriate, as well as threats and assaults against officers or employees of other federal law enforcement agencies, upon request. HSI will also lead investigations of threats or acts of destruction against ICE buildings, facilities, property, or equipment, in coordination with the Federal Protective Service (FPS) and OPR.

**2.4. ICE Employees Deployed Abroad.** ICE employees under the authority of the Chief of Mission, and pursuant to Department of State (DOS) regulations, must first report threats and assaults to the DOS Regional Security Office at the foreign post to which they are assigned and then promptly report to ICE in accordance with the procedures outlined in this Directive. ICE employees deployed abroad under Department of Defense (DOD) authority must report threats to the appropriate DOD officials and then promptly to ICE.

**3. Definitions.** The following definitions apply for the purposes of this Directive only:

**3.1. Assault.** Physical touch, hit, and/or strike, or any attempted act, either by the individual committing the assault, or by an instrument or object (e.g., bullet, knife, bat, or rock) set in motion by the individual committing the assault, with the intent to harm.

**3.2. Immediate Family Members.** Individuals of the ICE employee's household with any of the following relationships to the employee:

- 1) Spouse;
- 2) Domestic partner;
- 3) Children of the employee, of the employee's spouse, or of the employee's domestic partner, who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support. The term "children" includes natural offspring; stepchildren; adopted children; grandchildren, legal minor wards or other dependent children who are under legal guardianship of the employee, of the employee's spouse, or of the domestic partner; and an unborn child(ren) born and moved after the employee's effective date of transfer;
- 4) Dependent parents (including step and legally adoptive parents) of the employee, of the employee's spouse, or of the employee's domestic partner; and
- 5) Dependent brothers and sisters (including step and legally adopted brothers and sisters) of the employee, of the employee's spouse, or of the employee's domestic

partner, who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support.

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3.4. **Threat.** Verbal or written statement, gesture, or action that causes an individual to reasonably believe that he or she will be harmed, which includes, but is not limited to, stalking, vandalism, destruction of property, or voiceless telephone call.

3.5. **Senior Leaders.** The Director, Deputy Director, , the Executive Associate Directors and Deputy Executive Associate Directors of Enforcement and Removal Operations, HSI, and Management and Administration; the Assistant Directors of HSI; the Associate Director and Deputy Associate Director for the OPR; and the Principal Legal Advisor and Deputy Principal Legal Advisors.

3.6. **Protective Measures.** Physical security measures employed to prevent or reduce a potential threat.

3.7. **Protective Detail.** A protective team assigned to protect the personal security of an ICE employee.

4. **Responsibilities.**

4.1. The **Executive Associate Director of HSI** and the **Associate Director of OPR** are responsible for developing procedures, as appropriate, regarding the investigation of threats and assaults pursuant to this Directive.

4.2. **Senior Leaders** are responsible for:

- 1) Ensuring compliance with the provisions of this Directive;

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**4.3.** The **HSI SACs** and **Attachés** are responsible for:

- 1) Implementing the provisions of this Directive, and any implementing procedures, within their AORs;
- 2) Investigating threats and assaults against ICE employees, their family members, and other affected individuals associated with an ICE employee, as appropriate, within their AORs, except for employees of OPR and ICE Senior Leaders;
- 3) Investigating threats or acts of destruction against ICE buildings, facilities, property, or equipment, in coordination with the FPS and OPR;
- 4) Overseeing and advising on the proper protective measures of ICE employees, their immediate family members, and (consistent with Paragraph 2.2) their extended family members, as appropriate, within their AORs, except for employees of OPR and ICE Senior Leaders; and
- 5) Maintaining information and reports on threats and assaults against ICE employees, including acceptance or declination for Federal, State, and local prosecutions and final dispositions of such prosecutions, including convictions, dismissals, pleas, etc.

**4.4.** The **OPR SACs** are responsible for:

- 1) Implementing the provisions of this Directive, and any implementing procedures, within their AORs;
- 2) Investigating threats and assaults against OPR employees, their family members, and other affected individuals associated with an OPR employee, as appropriate, within their respective AORs, and against ICE Senior Leaders;
- 3) Investigating threats and assaults against ICE employees and contract employees by detainees in ICE custody or detention;
- 4) Overseeing and advising on the proper protective measures of OPR employees, their immediate family members, and (consistent with Paragraph 2.2) their extended family members, as appropriate, within their AORs; and
- 5) Maintaining information and reports on threats and assaults against OPR employees and ICE Senior Leaders, including acceptance or declination for Federal, State, and local prosecutions and final dispositions of such prosecutions, including convictions, dismissals, pleas, etc.

4.5. **OPLA** provides legal advice to Senior Leaders on the permissibility of expending appropriated funds for protective measures and protective details, as outlined in this Directive. Because of the legal complexities involved with determining the use of appropriated funds in this area, and the consequences of error, Senior Leaders are encouraged to coordinate with OPLA early in the planning process.

4.6. **OCFO** is responsible for:

- 1) Directing, guiding, and/or providing technical support and assistance to ICE Directorates and Program Offices on the authorization, funding and payment of expenses related to this Directive;
- 2) Ensuring that any expenditure of agency funds pursuant to this Directive complies with law, regulation, and policy, to include verifying availability of appropriate funding, creating project codes and travel labels, and distributing these to ICE Directorates and Program Offices, as necessary; and
- 3) Providing guidance to ICE Directorates and Program Offices as necessary to ensure appropriate internal controls and support in the execution of this Directive.

4.7. **Supervisors** are responsible for:

- 1) Immediately reporting information regarding threatened and/or assaulted employees under their supervision to the local HSI SAC or Attaché office and to the Joint Intelligence Operations Center, or, in a situation involving a detainee in ICE custody or detention, to the local OPR office and the Joint Intake Center;
- 2) Ensuring an ICE Significant Incident Report within the ICE Significant Event Notification system is submitted after becoming aware of threats and/or assaults against an ICE employee;<sup>3</sup> and
- 3) Encouraging threatened and assaulted employees under their supervision to seek assistance through the ICE Employee Assistance Program and to utilize the ICE Peer Support Program.

4.8. **Employees** are responsible for:

- 1) Reporting any threat or assault directed against them or their immediate families resulting from their official duties, actions, or employment with ICE and any threat or

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<sup>3</sup> The Use of Force, Assaults, and Discharges (UFAD) reporting process is automatically initiated after a use of force incident has first been reported in an ICE Significant Incident Report (SIR) within the ICE Significant Event Notification (SEN) system per ICE Directive 14011.1, *Reporting Guidelines for SIRs and SPEARs*, dated August 16, 2010, or as updated.

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act of destruction against ICE buildings, facilities, property, or equipment to the employee's supervisor; and

- 2) Exercising the option to report threats and assaults against other affected individuals associated with them linked to the employees' ICE employment, as appropriate, to their supervisor.

**5. Procedures.** None.

- 6. Recordkeeping.** HSI and OPR will maintain their respective investigative records created as part of this Directive. HSI must maintain its investigative case files in accordance with the Comprehensive Records Schedule N1-36-86-1-161.3 (Inv. 7b). Investigative Case Files must be retained for 20 years. OPR must maintain its investigative case files related to threats and assaults as there is no approved retention period (that decision remains pending with NARA). The records will not be destroyed until such time that a retention period is approved.

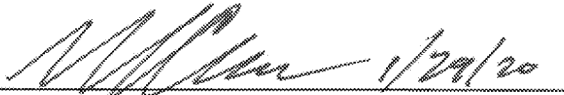
**7. Authorities/References.**

- 7.1. Pertinent provisions of Title 18 of the United States Code (U.S.C.), including but not limited to sections 111-115, *Assaults on Federal Officers*, section 119, *Protection of Individuals Performing Certain Official Duties*, section 875, *Interstate Communications*, section 876, *Mailing Threatening Communications*, section 2261A, *Stalking*, section 1114, *Protection of Officers and Employees of the United States*, section 1512, *Tampering with a witness, victim, or an informant*, section 1513, *Retaliating against a witness, victim, or an informant*.
- 7.2. 19 U.S.C. § 1589a, *Enforcement authority of customs officers*.
- 7.3. Title 41, Code of Federal Regulations (C.F.R), Chapter 301, Part 301-31, *Threatened Law Enforcement/Investigative Employees*.
- 7.4. DHS Delegation Order 7030.2, *Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement*, ¶ 2.A (Nov. 13, 2004).
- 7.5. DHS Instruction 121-01-018, *DHS Executive Security Protection* (Sept. 11, 2018).
- 7.6. ICE Directive 14011.1, *Reporting Guidelines for SIRs and SPEARs* (Aug. 16, 2010), or as updated.
- 7.7. ICE Memorandum, *New Use of Force, Assaults, and Discharges Reporting Process*, (Oct. 15, 2015).
- 7.8. U.S. Government Accountability Office, *Principles of Federal Appropriations Law 3-33* (4th ed. 2017 revision).

7.9. *Matter of: Occupational Safety and Health Review Commission-Refreshments for a Combined Federal Campaign Event, B-325023, (Comp. Gen. Jul. 11, 2014).*

8. **Attachments.** None.

9. **No Private Right.** This Directive is an internal policy statement of ICE. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law equity or otherwise by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.



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