

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
HOMELAND SECURITY INVESTIGATIONS**

HSI Directive 12-03: Escaped Prisoners

Issue Date: November 16, 2012

Effective Date: November 16, 2012

Superseded: U.S. Customs Service (USCS) Office of Investigations (OI) Internal Operating Procedures Notification (IOPN) 00-22 entitled, "Accountability Requirements for Lost/Stolen Evidence, Drugs, Currency and Escaped Prisoners," dated May 12, 2000, is hereby superseded as it relates to escaped prisoners only. (Note: The rest of IOPN 00-22 was superseded by U.S. Immigration and Customs Enforcement Homeland Security Investigations (HSI) memorandum entitled, "Updates to IOPN 00-22 – Accountability Requirements for Lost/Stolen Evidence, Drugs, Currency and Escaped Prisoners," dated January 28, 2011. The above-mentioned HSI memorandum dated January 28, 2011 is not being superseded by this Directive.)

Federal Enterprise Architecture Number: 306-112-002b

1. **Purpose/Background.** This Directive establishes policy and procedures concerning the escape of certain individuals in U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) custody, and provides guidance on the reporting and tracking of these incidents.
2. **Policy.** When escape incidents occur, the Special Agents involved will notify their supervisor immediately upon occurrence or upon discovery of the escape. Special Agents must make every effort to apprehend these individuals taking into account the safety of the officers involved and the general public. In addition, the affected HSI office must ensure that all appropriate notifications and administrative inquiries are completed in a timely manner.
3. **Definitions.** The following definitions apply for the purposes of this Directive only.
 - 3.1. **Administrative Arrest.** An administrative arrest of an individual may be initiated based on an administrative arrest warrant (DHS Form I-200, "Warrant for Arrest of Alien") or where there is reason to believe that the individual is in violation of the Immigration and Nationality Act and is likely to escape before a warrant can be obtained. An administrative arrest occurs when the disposition of the case will be sought in administrative court proceedings rather than in criminal court proceedings. (Note: Possible outcomes of an administrative arrest can include, but are not limited to: formal removal proceedings in immigration court; voluntary departure from the United States; removal under section 238 of the Immigration and Nationality Act, without formal removal proceedings; and reinstatement of a previous order of removal.

- 3.2. Criminal Arrest.** A criminal arrest is supported by probable cause to believe that the individual arrested has committed a criminal offense. (Note: Probable cause exists when articulable facts and circumstances would lead a reasonably prudent person to believe that a criminal offense has been committed or is being committed by the individual to be arrested. In cases where a criminal arrest warrant has already been issued, probable cause has already been established by the arresting agency to the court that has issued the arrest warrant.)
- 3.3. Custody** means that period of time during which a person has been arrested by HSI under its criminal and/or administrative authorities, is physically present in an HSI-owned, leased, or contracted facility or vehicle pursuant to such authorities, or is being transported by HSI (including for purposes of removal from the United States) pursuant to such authorities. Custody ends when the person is released from HSI's physical confinement or restraint, including upon transfer to Enforcement and Removal Operations (ERO) or another agency for detention under its own legal authorities.
- 3.4. Escape.** An escape is the unauthorized departure from HSI custody of an individual who has been arrested or is in any form of detention.
- 3.5. Escapee.** An escapee is a subject who has escaped from HSI custody at any point subsequent to arrest, and prior to being released from HSI's custody, transported for purposes of removal from the United States, or transferred to the custody of another agency.
- 3.6. Furlough.** According to Title 28, Code of Federal Regulations, Section 570.32, a furlough is an authorized absence from an institution by an inmate who is not under escort of a staff member, U.S. Marshal, or state or federal agents. Inmates who meet certain requirements are temporarily released from custody under carefully prescribed conditions. (b)(7)(E)
- (b)(7)(E)**
- 3.7. Juvenile.** Any person known or reasonably believed not to have reached his or her 18th birthday.

4. Responsibilities.

- 4.1.** The **Executive Associate Director** of HSI is responsible for the oversight of the provisions of this Directive.
- 4.2.** The **Assistant Director, Investigative Programs**, is responsible for the implementation of the provisions of this Directive.
- 4.3.** The **Deputy Assistant Director (DAD), Investigative Services Division (ISD)**, is responsible for ensuring that HSI Special Agents in Charge (SACs) comply with the provisions of this directive.

- 4.4. The **Unit Chief, Investigative Support Unit (ISU)**, is responsible for reviewing memoranda from the SACs prior to submitting them to the DAD, ISD. The Unit Chief of ISU will track these incidents and all pertinent information regarding them. The Unit Chief of ISU will also provide the National Firearms and Tactical Training Unit with all necessary information regarding escape incidents in accordance with ICE Directive 19906.1, "Escapes from Custody," dated August 16, 2012. If the escape occurred while the escapee was on an HSI-sponsored federal furlough, the Unit Chief of ISU will notify the Department of Justice (DOJ), Office of Enforcement Operations (OEO) of the incident.
- 4.5. **Special Agents in Charge (SACs)** are responsible for ensuring compliance with the provisions of this Directive within their respective areas of responsibility (AORs). SACs are also responsible for assigning a GS-14 level manager to conduct administrative inquiries of escape incidents that occur in their AORs when appropriate.
- 4.6. **Group Supervisors** are responsible for complying with all the reporting requirements mandated by this Directive.
- 4.7. **Special Agents** are responsible for complying with the provisions of this Directive. They will make every attempt to apprehend the escapee, taking into account the provisions of the "Interim ICE Use of Force Policy," dated July 7, 2004, or as updated or superseded, and the safety of the officers involved and the general public.
- 4.8. **SAC Fugitive Coordinators** will be responsible for ensuring that escapees with criminal or material witness arrest warrants are entered in the (b)(7)(E). In addition, they will ensure that all documents such as the arrest warrant, criminal complaint, and the Fugitive Report (Department of Homeland Security (DHS) Form 59) are also uploaded into FTS.
- 5. **Procedures.**
 - 5.1. **The following procedures apply to escapes by criminal arrestees, material witnesses, or inmates on an HSI-sponsored federal or state furlough.**

(b)(7)(E)

(b)(7)(E)

(b)(7)(E)

(b)(7)(E)


(b)(7)(E)

(b)(7)(E)

7. Authorities/References.

- 7.1.** 18 U.S.C. § 751, Prisoners in Custody of Institution or Officer.
- 7.2.** 18 U.S.C. § 111, Assaulting, Resisting, or Impeding Certain Officers or Employees.
- 7.3.** 22 U.S.C. § 3927, Chief of Mission.
- 7.4.** 28 C.F.R. § 570.32, Types of Furloughs.
- 7.5.** Memorandum of Understanding between U.S. Immigration and Customs Enforcement, Homeland Security Investigations and the U.S. Marshals Service regarding the Apprehension of Fugitives, dated March 22, 2012.
- 7.6.** ICE Directive 19006.1, Escapes from Custody, dated August 16, 2012, or as updated or superseded.
- 7.7.** Fugitives Handbook (OI HB 10-02), dated April 9, 2010, or as updated or superseded.
- 7.8.** Arrest Procedures Handbook (OI HB 07-02), dated October 4, 2007, or as updated or superseded.
- 8. Attachment.** Escapee Notification Memorandum Template (commonly referred to as the “16-Point Memorandum”).
- 9. No Private Rights.** This Directive is an internal policy statement of HSI. 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 by any party in any administrative, civil, or criminal matter.



For James A. Dinkins
Executive Associate Director
Homeland Security Investigations



Homeland Security

Attachment

MEMORANDUM FOR: Name
Executive Associate Director
Homeland Security Investigations

THROUGH: Name
Deputy Assistant Director
Investigative Services

FROM: Name
Special Agent in Charge
City, State

SUBJECT: Escape of [Name of Escapee]

Pursuant to Homeland Security Investigations (HSI) Directive 12-03, entitled, "Escaped Prisoners," dated November 16, 2012, the following details the events that led to the escape of [Name of escapee]_____.

1. Reporting office
2. Special Agent in Charge (SAC) name
3. Notifications (Office of Professional Responsibility/Joint Information Center, Joint Intelligence Operations Center, Assistant United States Attorney (AUSA), and Department of Justice's Office of Enforcement Operations (if appropriate))

Please indicate the individual contacted and the date and time of the notification.

4. Case number
5. Case/Operational name
6. Date/Time/Location of escape

7. Statement of facts surrounding the escape including descriptions of any irregularities or unusual circumstances

Please provide a complete and concise report of the facts surrounding the escape.

8. HSI personnel involved
9. Other agency personnel involvement (identify lead agency)

Please indicate name and title.

10. Brief description of efforts to safeguard against the escape and efforts to locate the prisoner
11. Judicial districts(s) involved, name of AUSA notified
12. Enforcement and Removal Operations personnel notified (if applicable)
13. Biographical information on escapee(s): Identifying data, criminal history, availability of fingerprints/photographs, etc.
14. Indicate if arrest warrant(s) have been obtained for escapee(s)
15. Media coverage anticipated (identify)
16. Name, title, office of manager who prepared this Accountability Control Memorandum for the SAC's signature

The Accountability Control Memorandum must include an answer for each of the above items, indicating "not applicable" if appropriate.