



Homeland Security

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MEMORANDUM FOR: DAVID V. AGUILAR
CHIEF
OFFICE OF BORDER PATROL

MARCY M. FORMAN
DIRECTOR
OFFICE OF INVESTIGATIONS

FROM: Robert C. Bonner
Commissioner
U.S. Customs and Border Protection

Michael J. Garcia
Assistant Secretary
U.S. Immigration and Customs Enforcement

SUBJECT: Guidelines Governing Interaction
Between ICE's Office of Investigations and
CBP's Office of Border Patrol

The missions of U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) are intricately connected and complementary. Neither agency can fully succeed in its efforts to secure the homeland without resolute commitment and support from the other. Nor can the agencies maximize their collective contributions to homeland security without organizing, streamlining, coordinating and deconflicting law enforcement actions that are executed by offices residing within each agency. A partnership predicated upon these principles is especially important between CBP's Office of Border Patrol (OBP) and ICE's Office of Investigations (OI).

Recently, a working group convened in Washington, DC, to develop guidelines governing critical interactions between OI and OBP. The guidelines, as set forth in this joint memorandum,¹ are founded upon the principles listed above and are designed to enhance an increasingly strong alliance between the Border Patrol and OI and are supported by the Under Secretary, Border and Transportation Security (BTS). The guidelines are binding and will direct sector Chief Patrol Agents (CPAs) and Special Agents in Charge (SACs) in developing operational partnerships between the Border Patrol and OI at the local level. This memorandum supersedes Guidelines 2, 3 and 5 of the April 2, 2004, joint CBP/ICE memorandum entitled "Anti-Smuggling Unit Transition."

¹ This joint memorandum is an agreement between ICE and CBP concerning only OI and OBP.

1. Interdiction and Investigation: The Border Patrol has primary responsibility for all cross-border and border related interdiction activities between the ports of entry (POE), and OI has primary responsibility for all investigations.

A. OI has primary responsibility for all investigations; however, the Border Patrol may initiate alien smuggling investigations as the operational need arises provided that:

- 1) The Border Patrol notifies OI that an investigation has been initiated or closed and provides the (b)(7)(E) (b)(7)(E) case number.²
- 2) If officially requested by the respective SAC, the CPA remands the investigation to the purview of OI. The Border Patrol may choose to remain an active participant in the investigation, but if OI takes the lead for the investigation, any Border Patrol agent that continues to participate in the investigation will do so under the direction of the SAC's designated lead for the investigation at hand.

B. The Border Patrol has primary responsibility for all cross-border and border related interdiction activities between the POEs (to include checkpoint operations and cross-border and border related surveillance).³ OI will participate as available. OI may engage in cross-border, border related interdiction activities after such activities are coordinated and mutually agreed upon between the respective CPA and SAC. When an OI investigation develops into a need to conduct cross-border and border related interdiction activities, the SAC will contact the CPA, and after discussion and consultation, the CPA will take one of three courses of action:

- 1) conduct joint interdiction operations that follow jointly developed operational plans designed to accomplish OI's stated objective.⁴ The CPA, or his designated lead, will exercise tactical command

² There is an ongoing effort between ICE and CBP to ensure that all records contained in (b)(7)(E) and the (b)(7)(E) are retrievable through either system.

³ When ICE engages in general surveillance activities of an investigative nature on or near the border (such as surveilling a dwelling as contraband is transported out of it to a destination elsewhere in the United States) and those activities do not involve surveilling actual illegal cross-border movement or smuggling, the Border Patrol should be notified but will not have purview over such a surveillance. The Border Patrol will have lead responsibility for surveillance that focuses on illegal cross-border activity between POEs.

⁴ For example, in an instance where the Border Patrol executes an interdiction concerning narcotics smuggling that is based on information passed by OI, the OI investigation may best be served by the Border Patrol executing the takedown after the smuggler walks the narcotics across the border and loads them into a vehicle. This type of information will be passed to the CPA, who will endeavor to accommodate such requests in accordance with due concern for officer safety and the safety of the public. In any similar instance, the SAC will clearly communicate "special requirements" to the CPA.

- over execution of the plan, but will consult to the extent possible with OI throughout the operation,⁵ or
- 2) coordinate and deconflict border operations to enable OI to lead the interdiction activities, or
 - 3) conduct the interdiction activities independently of OI if OI chooses not to participate in those activities.

In all instances where an investigation develops into a need to conduct cross-border and border related interdiction activities, the Border Patrol will provide for the interdiction through one of the three methods listed above. At no time will an OI-identified need for an interdiction go unmet.

C. The Border Patrol, for the purpose of facilitating investigative efforts concerning criminal(s) and/or criminal organization(s), will notify OI as soon as possible of certain interdiction events or investigations. CPAs and SACs should jointly develop local notification thresholds and protocols that consider their unique operational environments. Events requiring notifications may include:

- 1) The death of an alien(s).
- 2) The homicide or serious physical injury of agent(s)⁶ when there is a smuggling nexus.
- 3) Aliens held hostage.
- 4) Seizures of cash (over \$10,000).
- 5) Seizures of narcotics to which the Drug Enforcement Administration (DEA) declines to respond.⁷
- 6) Seizures of commercial shipments of merchandise.
- 7) Cross-border tunnels.
- 8) High profile cases and interdictions where significant media interest can reasonably be expected.
- 9) All outbound seizures related to criminal export violations.
- 10) Interdictions that are discovered to have ties to any OI investigation (TECS hits, etc.).

⁵ The Border Patrol will not exclude OI from participating in the interdiction if OI chooses to participate.

⁶ OI will not investigate the assaults on agents. Those investigations will still be done in accordance with current Border Patrol policy (i.e., Federal Bureau of Investigation and state and local law enforcement agencies (LEA) if applicable). OI's investigative responsibilities in such instances involve investigating the smuggling organization that is associated with the guide, smuggler, etc.

⁷ The Border Patrol is required to notify DEA of drug seizures. For narcotics interdiction events that are not the products of OI intelligence or joint OI-Border Patrol operations (see Section 2, "Title 21 Delegation of Authority," for instruction concerning these circumstances) where the DEA declines to respond to the Border Patrol's interdiction for further investigation, the Border Patrol should notify OI and OI may respond for further investigation. Where the Border Patrol is conducting joint operations with state and/or local LEA and a drug seizure is made, the Border Patrol will first notify DEA (in accordance with the standing MOU with DEA). If DEA declines to respond, the Border Patrol may turn the narcotics over to the state and/or local agencies.

11) Arrests of aliens from special interest countries and special interest aliens. Border Patrol representatives at the National Targeting Center (NTC) will notify the ICE representative at the NTC of any arrest of an alien from a special interest country. The ICE representative will be responsible for contacting the appropriate ICE duty agent. Additionally, the local Border Patrol may also notify the local OI duty agent directly.

D. OI, for the purpose of facilitating interdiction efforts against all illegal cross-border activity, to include aliens from special interest countries and special interest aliens, will notify the Border Patrol as soon as possible of information developed in the course of an investigation that is pertinent to the Border Patrol's mission. CPAs and SACs should jointly develop local notification thresholds and protocols that consider the unique operational environment in the CPAs' and SACs' area of responsibility. Events requiring notifications may include:

- 1) Modus operandi of smuggling organizations.
- 2) Identification of smuggling organizations as well as their geographical structure of operations.
- 3) Identification of smugglers and guides.
- 4) Entry points and smuggling routes being used by individuals or smuggling organizations.
- 5) High profile cases and investigations where significant media interest could reasonably be expected.

E. Concerning all joint operations, media interactions will be coordinated to ensure that both entities are fully aware of any media releases and interactions. The Border Patrol and OI will honor any operational integrity issues that arise from a joint or coordinated enforcement effort (whether preplanned or impromptu). Neither entity will release statements to the media concerning such operations (neither the interdiction nor the follow-on investigation) until it is mutually agreed that operational integrity is no longer an issue.

F. The Border Patrol and OI will notify each other of policy changes that are likely to affect the other.

2. Title 21 Delegation of Authority: OI and the Border Patrol each have a Memorandum of Understanding (MOU) with DEA that governs Title 21 authority. OI and the Border Patrol will continue to operate in accordance with their respective MOUs. In fulfilling their responsibilities within those MOUs, the Border Patrol and OI will adhere to the following:

A. Where the Border Patrol conducts drug interdiction activities at the request of OI that are:

- 1) based upon specific actionable intelligence received from OI on a particular smuggling target (i.e., a general description of the specific smuggling venture); and
- 2) OI has notified DEA of the impending action concerning the target and OI is in compliance with its standing MOU with DEA concerning Title 21 delegation of authority; and
- 3) the Border Patrol's interdiction activities result in the apprehension of the intended smuggling target identified by OI, then the Border Patrol will immediately notify and fully brief the local OI of the results of the interdiction and, upon OI's request, the Border Patrol will turn over the target and the contraband to OI.⁸ The Border Patrol will also immediately notify DEA upon seizure of the narcotics.⁹

B. Where the Border Patrol and OI are conducting a joint operation targeting drug smuggling activities¹⁰ and that operation results in a Border Patrol interdiction and seizure of narcotics, OI's participation in the interdiction will constitute notification of OI. The Border Patrol will immediately notify DEA of the seizure.¹¹

3. Processing Interdiction Events and Investigative Cases for Prosecution: An integral part of interdiction and investigation activities is processing the subject(s) and presenting the facts of either the interdiction or the investigation to the U.S. Attorney for prosecution when appropriate. "Processing" is defined as the act of completing all necessary and/or required paperwork or entry of data into various databases that is 1) associated with the arrest, interview, and interrogation of the individual(s); and/or 2) associated with the issuance of administrative charging documents against criminal aliens; and/or 3) necessary or required in the course of presenting the individual(s) to the U.S. Attorney for prosecution. The Border

⁸ The Border Patrol will complete any (b)(7)(E) documentation necessary to appropriately record the interdiction event (i.e., documenting the incident, chain of custody, etc.), but OI will be responsible for processing the case (interdiction event) for presentation to the U.S. Attorney for prosecution.

⁹ The Border Patrol is relieved of this requirement only if the local DEA office having jurisdiction over the area in which the interdiction will take place has stipulated that such notification, in the particular instance, is not required.

¹⁰ These efforts must be coordinated with DEA. If as a result of that coordination DEA stipulates that narcotics investigation(s) resulting from an interdiction made during the specified operation are to be done by OI, then the Border Patrol will comply with that decision. Local notification protocols can be worked out on a case-by-case basis between DEA, the Border Patrol, and OI. Absent any local incident-specific arrangements agreed to by DEA, OI, and Border Patrol, the existing MOUs between OI and DEA, as well as between Border Patrol and DEA, will be strictly adhered to.

¹¹ Border Patrol is relieved of this requirement only if the local DEA office having jurisdiction over the area in which the interdiction will take place has stipulated that such notification, in the particular instance, is not required.

Patrol and OI will each continue to fully process and present for prosecution those that they arrest to the U.S. Attorney.¹²

- A. The Border Patrol, after *interdicting* (or conducting an investigation consistent with the terms of this memorandum) and apprehending any suspect(s), will process the individual(s) and, at the discretion of the Sector CPA, will subsequently present the subject(s) to the U.S. Attorney for prosecution.¹³
- B. OI, after *investigating* (or conducting an interdiction consistent with the terms of this memorandum) and apprehending any suspect(s), will process the individual(s) and, at the discretion of the SAC, will subsequently present the subject(s) to the U.S. Attorney for prosecution.
- C. In some instances, interdictions and arrests made by the Border Patrol can be materially advanced through follow-on investigations conducted by OI. On-scene investigators may need to make use of the arrestee or the contraband interdicted by the Border Patrol in an effort to exploit the investigative potential of the Border Patrol's interdiction event. In such instances, the Border Patrol will take all reasonable steps to cooperate with the ensuing investigation, including the release of the arrestee and/or contraband¹⁴ to the custody of OI for the purpose of controlled deliveries, etc. Arrestee(s) and/or contraband will be released only after the Border Patrol has sufficiently processed the event.¹⁵ In cases of drug interdictions, both the Border Patrol and OI will adhere to existing MOUs with DEA and Section 2 of this memorandum.

¹²Typically, the arresting or apprehending agency is responsible for processing any and all individuals that are arrested and apprehended for either administrative and/or criminal violations (see Sections 2 and 3A for exceptions).

¹³For all Titles 8, 18, 19, 21, and 31 violations: In instances where the Border Patrol conducts interdiction activities at the request of OI and those requests are based upon specific actionable intelligence on a particular target that is passed to Border Patrol by OI and the Border Patrol's interdiction activities result in the arrest or apprehension of the intended target identified by OI, then OI will fully process any persons arrested or apprehended and prepare the cases for presentation to the U.S. Attorney. In support of OI's processing efforts, the Border Patrol will prepare a G-166 or other necessary internal documentation as appropriate.

To ensure the integrity of an ongoing investigation, OI may choose not to participate in the processing and/or subsequent prosecution of the interdiction event. Under these circumstances, the Border Patrol will process and prepare the case for presentation to the U.S. Attorney for prosecution.

¹⁴ When necessary, OBP will release property, narcotics, cash, etc., to OI in accordance with the existing CBP/OBP Asset Forfeiture Guidelines and Policy.

¹⁵ "Sufficiently processed" means that the Border Patrol has minimally processed or documented the interdiction event (for either administrative and/or criminal charges, to include, if necessary, approval of prosecution of the interdiction event by the U.S. Attorney) to the point that the arrestee's physical

If OI is successful in exploiting the investigative potential of the Border Patrol's interdiction event (i.e., materially expanding the case beyond the scope of Border Patrol's original interdiction event or arrest), the Border Patrol, in consultation with OI and the U.S. Attorney, will relinquish its interests in the individual to OI for continued investigation and subsequent presentation for prosecution to the U.S. Attorney.

If OI's ensuing investigative actions are unable to exploit the investigative potential of Border Patrol's interdiction event (i.e., materially expand the case beyond the scope of the original interdiction event or arrest), OI will return the arrestee to the respective U.S. Attorney's venue within which the Border Patrol originally charged and arranged for prosecution of the arrestee. OI will ensure that the arrestee is delivered to the appropriate detention facility within that venue.

The Border Patrol and OI are committed to working with the U.S. Attorney(s) having jurisdiction to determine the best course of action with respect to charging and prosecuting individuals and/or furthering an investigation.

- D. OI's roles and responsibilities when responding to an interdiction event include the following:
- 1) OI will receive a brief from the Border Patrol case agent or supervisory Border Patrol agent in charge of the interdiction event.
 - 2) OI will determine whether or not an official investigation will be opened or whether or not the event will be incorporated into an ongoing official investigation and will advise the Border Patrol accordingly.
 - 3) Once OI decides to open an official investigation, OI will coordinate with the U.S. Attorney to determine the best possible course of action. At the conclusion of the Border Patrol's processing of the interdiction event, OI will assume all follow-on investigative responsibilities.
 - 4) As the Border Patrol processes the interdiction event (for either criminal or administrative proceedings), the Border Patrol will make every effort to support OI's investigative needs. The Border Patrol lead and the OI lead will work together in a partnership to formulate a strategy that will facilitate processing, prosecution, and investigative needs.
 - 5) Though both agencies must continue to follow their existing (b)(7)(E) (b)(7)(E) and seizure policies, the Border Patrol lead and the OI lead will work together to ensure

presence is no longer needed and that completion of any remaining paperwork associated with the arrest can be completed without the arrestee's physical presence.

that evidence handling, logging, and transfers of chain of custody are conducted pursuant to the Federal rules of evidence and agency policy.

- 6) If OI chooses not to proceed with opening an official investigation, the Border Patrol will proceed as usual.
- 7) The Border Patrol has the lead role for managing an incident scene in the field that results from any Border Patrol activity or interdiction event until the incident is adopted by OI as a formal investigation, at which time, OI will take the lead role in conducting interviews and managing the incident scene.

E. Calls for routine assistance from either the Border Patrol or OI to the Border Patrol or OI will be handled in the spirit of cooperation and facilitation and will be honored as resources and operational commitments allow. Calls for assistance may involve processing aliens, transporting aliens, providing agents for service of warrants, augmenting investigative efforts, augmenting interdiction efforts, etc. Calls for assistance do not transfer responsibility from the office requesting assistance to the office called upon.

(b)(7)(E)

¹⁶ Refer to Section 1, "Interdiction and Investigation," of this memorandum for interdiction guidelines.

(b)(7)(E)

(b)(7)(E)

¹⁷ The purposes of the list are primarily deconfliction and reduction in the likelihood that an ongoing operation or investigation might be unduly compromised.

(b)(7)(E)

(b)(7)(E)

¹⁸ SEACATS contains data fields for the discovering agency, the arresting agency, the seizing agency, and participating agencies. OBP and OI will enter the appropriate agency into each of these data fields in accordance with this memorandum.

(b)(7)(E)

(b)(7)(E)