


U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536**U.S. Immigration
and Customs
Enforcement**

APR - 8 2004

ACTION

MEMORANDUM FOR: Michael J. Garcia
Assistant Secretary

FROM: John P. Clark 
Director, Investigations

SUBJECT: Guidelines Re: Issuance of Warnings to Persons of Threats to Life or
of Serious Bodily Injury.

Purpose

The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) has investigative authority over a variety of matters, including but not limited to: national security, Titles 8, 18, 19, 21, 22, 31 and 50. During the course of criminal investigations, threats to life or serious bodily injury to individuals, as well as threats to occupied structures and conveyances, can become known to agents. When ICE acquires credible information of such a nature, reasonable actions must be taken to attempt to protect the individual or structure in question. Failure to act reasonably can result in a Federal Tort Claims Act ("FTCA") suit against the Agency, and the individual agent(s) involved. In order to protect ICE against FTCA claims, the Office of Investigations should implement guidelines regarding the issuance of warnings to the intended target of the threat. The guidelines should set forth procedures that call for the notification of the target(s), as well as local law enforcement of the potential threat.

Background

In January 2004, the Office of Investigations, Special Agent in Charge ("SAC") Atlanta, intercepted communications regarding a conspiracy to murder. In the absence of an ICE policy or directive, the Title III Program Manager and the Customs Enforcement Law Division ("CELD") relied on Department of Justice ("DOJ") Resolution 20 entitled "Federal Law Enforcement Agencies' Issuance of Warnings" for guidance as to what constitutes reasonable action. ICE documented anonymous notifications to the intended victim and to a local law enforcement agency. The CELD as well as the SAC Atlanta and the Title III Program Manager all have a file with the aforementioned documentation. A copy of Resolution 20 is attached.

Discussion

Resolution 20 addresses the responsibilities of Federal Law Enforcement Agencies falling under the authority of the DOJ when threats to life or serious bodily injury to individuals and threats to occupied structures and conveyances become known during investigations. Resolution 20 states that when an agency has information that a person who is identified or can be identified through reasonable means is subject to a credible threat to his/her life or serious bodily injury, the agency should take appropriate action to attempt expeditiously to warn that person of the nature and extent of the threat.

Upon determining that a warning is appropriate, an agency has the latitude to determine the means and manner of the warning, using the method the agency has determined is most likely to provide direct notice to the intended victim. This may be accomplished with the assistance of a third party. In addition, the agency must document in writing, in its files, the content of the warning, and when and where, how, and by whom it was delivered to the intended victim. An agency may also seek the assistance of another law enforcement agency to provide the warning. If this is done, the agency must document in writing, in its files, the notification of the threat, when, where, how, and by whom notification to the other agency was made, and the name of the other agency's representative to whom it was delivered, along with the other agency's agreement to provide a timely warning.

Resolution 20 provides exceptions to the notification requirements. An agency need not attempt to warn an intended victim of a threat to his/her life or of serious bodily injury when a senior manager (defined as an operational manager at the GS-15 rank or higher, but also includes SACs) determines that one or more of the following situations is present:

1. Providing the warning to the intended victim is likely to cause equal or greater physical harm to one or more persons; or
2. The intended victim knows the nature and extent of the specific threat against him/her; or
3. The intended victim is (a) a public official who, because of his/her official position, is provided a protective detail (in which case, the protective detail should be notified in lieu of the intended victim); (b) a participant in the Witness Security Program that is administered by the United States Marshals Service; or detained or incarcerated; or
4. That measures taken, or about to be taken, are highly likely to counteract the threat.

An agency need not attempt to notify another law enforcement agency that has jurisdiction concerning the threat:

1. When providing the notification to another law enforcement agency is likely to cause equal or greater physical harm to one or more persons; or
2. When the other law enforcement agency knows the nature and extent of the specific threat to the intended victim, or occupied structures or conveyances

Whenever time and circumstances permit, an agency's decision not to provide notification to another law enforcement agency in the foregoing circumstances must be approved by a senior manager.

In all cases, the reasons for an agency's decision not to provide a warning must be documented in writing in the agency's files. However, an agency shall not refrain from providing a warning or taking other appropriate action merely because the warning or action may result in the disclosure or disruption of an investigation.

Recommendation

In order to provide guidance to the field as to ICE's policy regarding the issuance of warnings to persons, and notification to other law enforcement agencies, of threats to life or of serious bodily injury, it is recommended that ICE generally adopt the procedures set forth in DOJ Resolution 20 with the following changes/addendums:

The ICE case agent, or in the case agent's absence a designee, must notify first line management of the threat, who will then take reasonable actions to warn the intended victim(s) and/or a law enforcement agency with appropriate jurisdiction.

In instances where a warning will be issued to the intended victim, ICE or another individual deemed appropriate by first line management, will attempt to notify the intended victim.

(b)(7)(E)

In situations where violent activity in progress is intercepted, such as a domestic disturbance, a report to the law enforcement agency with jurisdiction must be made without delay. The report can be made anonymously citing a domestic disturbance or violent crime in progress.


When the circumstances of the threat fall under the purview of one of the exceptions to the notification requirement, the SAC, or the person serving in his/her capacity in his/her absence, must approve the decision not to notify the intended victim and/or another law enforcement agency. The reason and the decision not to provide notification must be documented in writing by the SAC.

The SAC office must notify the Unit Chief, Investigative Support of the nature of the threatening information as soon as practical and must forward within 48 hours of obtaining the information, documentation of the warning notification or reasons for declining to issue a warning. In cases where the information was obtained from a court-authorized intercept, the office must also notify the National Title III Program Manager.

Investigative Support will, upon receipt, provide CELD with the written documentation of the notification or reasons notification was declined. CELD will review the documentation for legal sufficiency. CELD will maintain documentation of the notification on file. The case agent will also maintain a copy of the written documentation of the notification in the case file.

The policy does not supersede any inconsistent federal/state statutes or case law.

This proposed policy, co-authored by Investigative Support and CELD, has undergone extensive review by DHS General Counsel. DHS General Counsel concurs with the policy and approves of its use by the Office of Investigations.

Approve  MAY - 7 2004 Disapprove _____
Modify _____ Needs more discussion _____

Attachment