




**U.S. Immigration  
and Customs  
Enforcement**

JUL - 9 2004

**MEMORANDUM FOR:** All Special Agents in Charge

**FROM:** Marcy M. Forman   
Acting Director,  
Office of Investigations

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

On May 7, 2004, Assistant Secretary Michael J Garcia approved implementation by OI of the following policy regarding the issuance of warnings to persons of threats to life or serious bodily injury.

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 OI 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.

When OI 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, OI must take appropriate action to attempt expeditiously to warn that person of the nature and extent of the threat.

Upon determination that a warning is appropriate, OI has the latitude to determine the means and manner of the warning, using the method that OI has determined is most likely to provide direct notice to the intended victim.

The case agent, or in the case agent's absence a designee, must notify first line management of the threat. First line management must take reasonable actions to warn the intended victim(s) and/ or a law enforcement agency with the appropriate jurisdiction, unless the circumstances of the threat fall within one of the following exceptions.

OI need not attempt to warn an intended victim of a threat to his/her life or of serious bodily injury when a Special Agent in Charge, or a person serving in his/her capacity during his/her absence, determines that one or more of the following situations are present:

- That providing the warning to the intended victim is likely to cause equal or greater physical harm to one or more persons;
- That the intended victim knows the nature and extent of the specific threat against him/her;

That 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;

- That measures taken or about to be taken are highly likely to counteract the threat.

OI need not attempt to notify another law enforcement agency that it has jurisdiction concerning a threat:

When providing the notification to the other law enforcement agency is likely to cause equal or greater physical harm to one or more persons; or

- When the other law enforcement agency knows the nature and extent of the specific threat to the intended victim, or occupied structures or conveyances

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

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During an intercept, violent activity may be overheard or viewed. If this violent behavior (i.e. domestic disturbance) is overheard or witnessed during the course of a court authorized intercept or during an investigative activity, 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.

Attachment

cc: All Deputy Assistant Directors