



POLICE DEPARTMENT COUNTY OF MAUI



MICHAEL P. VICTORINO
MAYOR

55 MAHALANI STREET
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(808) 244-6400
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CHIEF OF POLICE

OUR REFERENCE
YOUR REFERENCE

DEAN M. RICKARD
DEPUTY CHIEF OF POLICE

August 4, 2021

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

[Signature] 8/5/21
Acting Mayor Date

For Transmittal To:

Council Chair Alice Lee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

RECEIVED
2021 AUG - 6 AM 11:33
OFFICE OF THE
COUNTY CLERK

Re: Ordinance Authorizing the Mayor to Enter into an Intergovernmental Agreement with the U.S. Immigration and Customs Enforcement

Dear Chair Lee:

Enclosed is a draft of a "Bill for an Ordinance Authorizing the Mayor of the County of Maui to Enter into an Intergovernmental Agreement with the U.S. Immigration and Customs Enforcement Homeland Security Investigations" for referral to the appropriate Council Committee.

If there are further questions, please contact Captain Randy Esperanza, Commander of the Criminal Investigation Division at X-6428. Thank you for your consideration.

Sincerely,

DEAN M. RICKARD
Acting Chief of Police

Enclosure

COUNTY COMMUNICATION NO. 21-413

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT HOMELAND SECURITY INVESTIGATIONS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The US. Immigration and Customs Enforcement Homeland Security Investigations (“ICE”) and the County of Maui, Department of Police (“MPD”) wish to enter into a mutually beneficial agreement that would permit ICE to designate MPD officers as custom officers and provide appropriate training to any designated officers as more fully described in the Memorandum of Understanding (the “Agreement”), attached hereto as Exhibit “1” and incorporated herein by reference.

Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the county or any department or agency thereof.

SECTION 2. Council authorization. Pursuant to Section 2.20.020, Maui County Code, the Council of the County of Maui hereby authorizes the Mayor to execute the Agreement, all other necessary documents relating to the Agreement, and any amendments thereto.

SECTION 3. Effective date. This ordinance shall take effect upon its approval. All action heretofore taken, not inconsistent with the provisions of this ordinance, is hereby ratified, approved and affirmed.

APPROVED AS TO FORM
AND LEGALITY:

Keola

Whittaker

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KEOLA R. WHITTAKER
Deputy Corporation Counsel
County of Maui
LF2021-1040
2021-07-23 Authorizing IGA.docx

MEMORANDUM OF UNDERSTANDING

between

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
HOMELAND SECURITY INVESTIGATIONS

and

COUNTY OF MAUI, DEPARTMENT OF POLICE
("Maui Police Department")

regarding

THE DESIGNATION OF MAUI POLICE DEPARTMENT EMPLOYEES
AS CUSTOMS OFFICERS (EXCEPTED)

1. **PARTIES.** The Parties to this Memorandum of Understanding (MOU) are U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) and Maui Police Department.
2. **AUTHORITY.** Title 19, United States Code (U.S.C.), Section 1401(i); 19 U.S.C. § 1589a. This MOU is also authorized under the provisions of Maui County Code Chapter 2.20.
3. **PURPOSE.** The Parties agree that effective enforcement of the laws relating to HSI jurisdiction requires close cooperation and coordination between the two Parties. The Parties have therefore entered into this MOU to govern the use of HSI designations by certain employees of Maui Police Department.

Pursuant to section 401(i), Tariff Act of 1930, as amended (19 U.S.C. § 1401(i)), the Secretary of Homeland Security is authorized to designate persons as Customs Officers (Excepted) to perform the duties of a Customs Officer. Within ICE, this authority has been delegated to the HSI Special Agents in Charge. Pursuant to 19 U.S.C. § 1589a, customs officers are authorized to enforce the full range of federal offenses. However, in designating Customs Officers (Excepted), *HSI is not conveying the authority to enforce administrative violations of immigration law.*

There may be instances when HSI determines that it is desirable for certain sworn law enforcement employees of Maui Police Department to perform certain HSI duties. This MOU sets forth the agreement and relationship between the Parties with respect to this determination.

4. **RESPONSIBILITIES.**

The Parties agree as follows:

HSI agrees to:

- a. Designate certain employees of Maui Police Department as Customs Officers (Excepted), without additional compensation, to perform the duties as noted on the "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001). This form is attached and is hereby made part of this MOU;
- b. Issue a "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001) to each qualified and designated employee;
- c. Provide appropriate training in laws, policies, and procedures to each designated employee;

- d. Advise the designated Customs Officers (Excepted) about court proceedings concerning seizures or arrests made by them in accordance with the authorities granted by HSI contemplated under this MOU; and
- e. Process, under appropriate regulations, any injury claim submitted as a result of injuries occurring to the designated Customs Officers (Excepted) while such individuals are acting pursuant to this MOU, for compensation under the Federal Employee Workers Compensation Act (5 U.S.C. § 8101, *et seq.*).

Maui Police Department agrees:

- a. That only sworn law enforcement officers of Maui Police Department who successfully complete the appropriate HSI Task Force Officer cross-designation Training Course and receive an approved "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001) will be designated as Customs Officers (Excepted);
- b. That each law enforcement officer will be bound by the Authorities Granted and the Endorsements and Restrictions as noted on the "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001);
- c. To advise HSI of each court proceeding in which the validity of a Customs Officer (Excepted)'s enforcement authority becomes an issue, and allow HSI to provide legal memoranda or other assistance as deemed necessary by HSI;
- d. That agency employees designated as Customs Officers (Excepted) will follow HSI directives and instructions when utilizing enforcement authority conveyed by HSI;
- e. To provide to HSI, before designation of each officer and on an ongoing basis, any derogatory information, or information that may call into question the officer's truthfulness or ability to testify in court; and
- f. To return all HSI-issued equipment and identification when a cross-designated officer terminates employment or when his or her cross-designation expires.

Both Parties agree:

- a. That any abuse of HSI cross-designation authority may lead to the revocation of such cross-designations by HSI; and
- b. To schedule periodic meetings to review this MOU, as required.

5. REPORTING AND DOCUMENTATION. HSI SAC offices will maintain the original signed "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001). Copies of this form will be held by the Contraband Smuggling Unit at HSI Headquarters, the designated Customs Officer (Excepted), and Maui Police Department.

If applicable, the HSI office will maintain documentation of designated Customs Officers (Excepted) approved to use HSI vehicles and certification that the designated Customs Officers (Excepted) have completed the ICE Fleet Card Training in Virtual University and any other fleet related training.

6. POINTS OF CONTACT.

HSI Office: SAC Honolulu
Name: Gary Bell
Title: Management Program Analyst
Address: 595 Ala Moana Blvd.,
Honolulu, HI 96813
Telephone Number: +1 (808) 260-5962
Fax Number: +1 (808) 522-5852
E-mail Address: gary.bell@ice.dhs.gov

Maui Police Department :
Name: Randy Esperanza
Title: Captain
Address: 55 Mahalani Street
Wailuku, HI 96793
Telephone Number: +1 (808) 244-6428
Fax Number:
E-mail Address: randy.esperanza@mpd.net

7. OTHER PROVISIONS. This MOU is an internal agreement between the Parties and does not confer any rights, privileges, or benefits to any other party or the public.

Nothing in this MOU is intended to conflict with current laws, regulations, or policies of either Party. If a term of this MOU is inconsistent with such authority, that term shall be invalid but the remaining terms and conditions of this MOU shall remain in full force and effect.

Nothing in this MOU is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1519.

The forms and authorities referenced herein may be renamed or replaced by HSI without prejudice to this MOU.

8. EFFECTIVE DATE. The terms of this MOU will become effective on the date the last Party signs the MOU. The Designation Form of each Customs Officer (Excepted) is effective per the date on that document.

9. MODIFICATION. This MOU may be amended by the written concurrence of both Parties.

10. TERMINATION. This MOU may be terminated by either Party upon a 30-day written notification to the other Party.

APPROVED BY:

John F. Tobon
Name of HSI Official

Special Agent in Charge
Title of HSI Official
Homeland Security Investigations
U.S. Immigration and Customs Enforcement

Date: _____

COUNTY OF MAUI:

By _____
MICHAEL P. VICTORINO
Its Mayor

Date: _____

Dean Rickard
Name of Maui PD 's Official

Deputy Chief of Police
Title of Maui PD 's Official
Name of Maui PD 's Agency

Date: 6/1/21

Approved as to Form
and Legality:

Keola
Whittaker
KEOLA R. WHITTAKER
Deputy Corporation Counsel
County of Maui

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

**HSI Directive 21-04: Use of Body-Worn Cameras by State and Local Title 19
Cross-Designated Task Force Officers**

Issue Date: March 3, 2021
Effective Date: March 3, 2021
Superseded: N/A
Federal Enterprise Architecture Number: 306-112-002b

1. **Purpose/Background.** The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI) partners with state and local law enforcement agencies throughout the nation on joint task forces. These relationships are vital to achieving HSI's mission of protecting our national security as well as the communities which we serve.

Several of HSI's partner state and local agencies have implemented internal policies mandating the use of body-worn cameras (BWCs) and have requested that their officers wear BWCs while conducting planned arrests and executing search warrants during federal task force operations. Other state and local agencies do not equip or mandate the use of BWCs.

This Directive provides guidance regarding the use of BWCs by task force officers (TFOs) assigned to or assisting HSI-led task forces or groups.

2. **Policy.** It is HSI policy to establish clear standards specific to the authorization and oversight of HSI operations, including the use of non-HSI law enforcement personnel assigned as TFOs to HSI-led task forces or groups. Where the parent law enforcement agency has an internal BWC policy, HSI will permit the use of BWC by state and local Title 19 cross-designated TFOs assigned to or assisting HSI-led task forces or groups during planned enforcement operations subject to the restrictions herein. In the event that the TFO parent agency's BWC policy is inconsistent or contradictory with this Directive, this Directive will control the use of BWCs by TFOs during all HSI-led operations. The responsibility to ensure that BWCs are in working order lies with the respective TFO and the issuing parent law enforcement agency.
3. **Definitions.** The following definitions apply for purposes of this Directive only:
 - 3.1. **Body-Worn Camera:** A wearable electronic device which, when active, records the audio, video, or photographic record of the wearer's actions in the performance of his or her duties.

- 3.2. Duplicate:** In accordance with Section 1001(c) of the Federal Rules of Evidence, the term “duplicate” means a counterpart produced by mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.
- 3.3. Parent Agency:** The employing law enforcement agency of the TFO assigned to or assisting an HSI-led task force or group.
- 3.4. Recording(s):** The audio and video recordings and associated metadata from TFOs’ BWCs made during HSI-led planned enforcement operations, including state and local warrants utilized by HSI.
- 3.5. Task Force Officer:** A sworn domestic or foreign law enforcement officer assigned to or assisting an HSI-led task force or group in compliance with HSI Directive 18-02, Law Enforcement Officers Designated to Act as Customs Officers (Excepted) for Investigative Purposes, dated July 30, 2018, or as updated.
- 4. Responsibilities.**
- 4.1.** The **Executive Associate Directive** of HSI is responsible for the oversight of the policy and procedures in this Directive.
- 4.2.** The **Deputy Assistant Director, Transnational Organized Crime 1**, is responsible for overseeing the overall implementation of the provisions of this Directive within HSI.
- 4.3.** The **Unit Chief, Contraband Smuggling Unit**, is responsible for the implementation of the provisions of this Directive within HSI.
- 4.4.** The **National TFO Coordinator** is responsible for the implementation and recordkeeping of compliance with the provisions of this Directive.
- 4.5.** **Special Agents in Charge (SACs)** are responsible for implementing the provisions of this Directive within their respective areas of responsibility (AORs).
- 4.6.** **Assistant Special Agents in Charge (ASACs)** are responsible for implementing the provisions of this Directive within their respective AORs.
- 4.7.** **Resident Agents in Charge (RACs)** who are second-line supervisors are responsible for implementing the provisions of this Directive within their AORs.
- 4.8.** **Local TFO Coordinators** are responsible for the implementation and recordkeeping of current Designation, Customs Officer (Excepted) – Title 19 Task Force Officer (ICE Form 73-001) and the Memorandum of Understanding template (ICE Form 73-002), as well as for coordinating the implementation of this Directive as outlined in Section 5.3.
- 4.9.** **Case Agents** are responsible for complying with the provisions of this Directive.

4.10. Task Force Officers are responsible for complying with the provisions of this Directive while operating in HSI-led operations.

5. Procedures/Requirements.

5.1. Permissible Use of Body-Worn Cameras by Task Force Officers. Unless subject to specific exceptions below, state and local Title 19 cross-designated TFOs employed by parent law enforcement agencies that mandate the use of BWCs while assisting on federal task forces or groups may wear and activate their recording equipment for the purpose of recording their actions during HSI-led enforcement operations in which there is:

- 1) a planned attempt to serve an arrest warrant or other planned arrest; or
- 2) the execution of a search warrant.

TFOs may activate their BWCs only when they are physically present in a location or within a jurisdiction where their parent agency's BWC policy is applicable. In no circumstance are TFOs authorized to activate their BWCs outside the confines of their parent agency's home state. TFOs are authorized to activate their BWCs upon approaching a subject or premises and will deactivate their BWCs when the scene has been determined safe, secured, and under law enforcement control by the federal supervisor on the scene as designated by HSI. TFOs who intend on activating BWCs while assisting on HSI-led task forces or groups must be present for Operation Plan briefings and shall verbally advise all task force participants of the presence of, and intent to, activate BWCs. When practicable, TFOs shall verbally notify task force participants when activating BWCs during an operation, and, when practicable, will advise when BWCs are deactivated.

5.2. Prohibited Use of Body Worn Cameras by Task Force Officers. TFOs are prohibited from recording:

- 1) Undercover operations;
- 2) Confidential informants or confidential sources;
- 3) Sources of information;
- 4) Witness interviews; or
- 5) On-scene actions by any non-law enforcement persons who are assisting law enforcement personnel prior to, during, or after an operation.

TFOs are prohibited from activating their BWC if they are:

- 1) Using specialized or sensitive investigative techniques,
- 2) operating in a sensitive area, or
- 3) working in an undercover or covert status on behalf of the federal task force or federal agency or if it is determined that the BWC will compromise sensitive investigative techniques.

Subject to HSI's discretion, TFOs generally shall not use their BWCs to record any activities related to investigations involving public corruption, medical facilities, national security, international controlled deliveries, or other specialized law enforcement techniques approved for operation by the SAC.

The SAC's designee will not be lower than an ASAC or a RAC supervisory level. If there is a disagreement between the TFO's parent agency and HSI about when an exemption is warranted, the ASAC will work with the TFO's parent agency and resolve the issue. In the event that the ASAC and the TFO's parent agency's designee are unable to resolve the conflict, the SAC and the head of the TFO's parent agency will resolve the issue.

TFOs are prohibited from wearing, using, or activating BWCs within ICE work spaces or ICE operated facilities.

- 5.3. Implementation of this Directive.** Implementation of this Directive will be achieved within 60 calendar days of the date of signature of this Directive. Local TFO Coordinators will provide this Directive to all state and local Title 19 cross-designated TFOs and their parent agencies for review and acknowledgement. They will then coordinate the execution of a new ICE Form 73-001 for each Title 19 cross-designated TFO in which Block 14, Other Endorsements and Restrictions, will state "The TFO is permitted to utilize a [TFO parent agency]-issued BWC during HSI-led operations in compliance with HSI Directive 21-04, Use of Body-Worn Cameras by State and Local Title 19 Cross-Designated Task Force Officers, dated March 3, 2021, or as updated." Lastly, a new ICE Form 73-002 will be executed by the parent agency of each state and local Title 19 cross-designated TFO. This will allow for the limited utilization of BWCs on HSI-led task forces or groups if required by the TFO's parent agency. The parent agency's internal BWC policy will be made available to the SAC in the relevant AOR and attached to both the updated ICE Forms 73-001 and 73-002 referenced herein. If any parent agency enacts an internal BWC policy subsequent to this Directive being enacted, a copy will be provided to HSI and attached accordingly.

5.4. Notification of Internal Investigation(s).

A TFO's parent agency will promptly notify the HSI case agent of any internal investigation(s) pertaining to a TFO assigned to, or assisting, an HSI-led task force or group.

HSI case agents will convey a parent agency notification to the ICE Office of Professional Responsibility's Joint Intake Center (JIC) for its review, in accordance with HSI's current reporting procedures.

In the event that an HSI-led operation that includes the participation of a TFO is submitted to the JIC for review, the HSI case agent will notify the parent agency's office of internal affairs, or equivalent, and provide a point of contact for coordination.

5.5. Parent Agency Disclosure or Dissemination of TFO BWC Recordings.

General Prohibition on Disclosure. In the situations where the TFO's BWC recordings were captured during an HSI-led operation, the parent agency may not disseminate the BWC recordings outside of the parent agency or for public release without written approval from HSI.

Request for expedited public release. If a parent agency seeks expedited public release of a recording, the parent agency shall ask for approval from HSI and the United States Attorney. Situations in which a parent agency seeks expedited public release may include, but are not limited to, a recording which depicts TFO conduct resulting in the serious bodily injury or death of another person during the execution of an HSI-led operation. HSI and the United States Attorney will, as expeditiously as possible, review the request and provide written concurrence or nonconcurrence. HSI and the United States Attorney may require redactions or other appropriate protection of information. If concurrence is granted, the parent agency will give as much advanced notice as possible to both HSI and the United States Attorney as to the time and manner of the recording's release.

Exception to General Prohibition on Disclosure. The TFO's parent agency is authorized to use TFO BWC recordings for internal investigations of its personnel consistent with its policies and procedures without seeking or obtaining HSI approval.

6. Recordkeeping.

- 6.1. BWC Recording.** The TFO parent agency will provide to the HSI Case Agent a duplicate and unredacted copy of all BWC recording(s) captured during an HSI-led operation in a timely manner and on an HSI-approved media storage device. A review of the BWC recording will be conducted and a Report of Investigation will document the event contained in the BWC. A working copy of the BWC recording will be retained in the case file and provided with other law enforcement sensitive data to the United States Attorney's Office or District Attorney's Office for potential evidentiary value in

accordance with the current federal discovery process and timelines. HSI will not release data to any other entity without prior consent from the parent agency.

- 6.2. Records Retention.** All BWC recording(s) will become part of the HSI case file and must be maintained in accordance with a National Archives and Records Administration (NARA)-approved records schedule. These records are currently not covered under an approved schedule; as a result, they are considered unscheduled and must be maintained permanently until a schedule has been approved. If the records are or become subject to a litigation hold, they may not be disposed of under a records schedule and must be retained until further notification. Questions regarding retention of the recordings should be directed to the Records Unit in the ICE Office of Information Governance and Privacy.
- 6.3. Recordkeeping Compliance.** HSI personnel will ensure the safeguarding, maintenance, retention, and disposition of TFO BWC recordings in accordance with the Privacy Act, agency policy, any litigation holds, and any applicable records schedule. Local TFO Coordinators will ensure compliance and retention of completed ICE Forms 73-001 and ICE Forms 73-002 reflecting authorization to wear BWCs within their AOR. All local TFO Coordinators will work with the national TFO program coordinators annually to report their AOR's compliance.
- 7. Authorities/References.**
- 7.1.** 19 U.S.C. § 1401(i), Officer of the customs; customs officer.
- 7.2.** HSI Directive 18-02, Law Enforcement Officer Designated to Act as Customs Officers (excepted) for investigative Purposes, dated July 30, 2018, or as updated.
- 7.3.** HSI HB 20-04, Case Management Handbook, dated July 1, 2020, or as updated.
- 8. Attachments.** None.
- 9 No Private Right.** This Directive provides only internal HSI policy guidance, which may be modified, rescinded, or superseded at any time without notice. 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. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of HSI.

**DAVID C
SHAW**

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Patrick J. Lechleitner
Acting Executive Associate Director
Homeland Security Investigations