

REQUEST FOR LEGAL SERVICES

D a t e: May 5, 2023

F r o m: Tamara Paltin, Chair

Disaster, Resilience, International Affairs, and Planning Committee

TRANSMITTAL

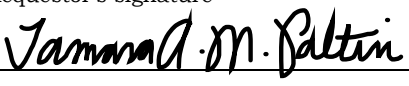
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Victoria J. Takayesu, Esq.

Subject: AUTHORIZING THE MAYOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT HOMELAND SECURITY INVESTIGATIONS (DRIP-5)

Background Data: Please find attached a copy of correspondence dated February 14, 2022, from the Department of the Corporation Counsel, relating to this matter. As the Department recommended, may I please request a revised proposed resolution that references and requests the Council to approve the Memorandum of Understanding between the County and U.S. Immigration and Customs Enforcement ("ICE") Homeland Security Investigations, including language that highlights and identifies the exclusion of authority to enforce administrative violations of immigration laws and less prominently references "ICE."

Work Requested: ☐ FOR APPROVAL AS TO FORM AND LEGALITY

☒ OTHER: Please submit a revised proposed resolution.

Requestor's signature  Tamara Paltin	Contact Person <u>Paige Greco</u> (Telephone Extension: <u>7660</u>)
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☒ ROUTINE (WITHIN 15 WORKING DAYS)

☐ RUSH (WITHIN 5 WORKING DAYS)

☐ PRIORITY (WITHIN 10 WORKING DAYS)

☐ URGENT (WITHIN 3 WORKING DAYS)

☐ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): _____
REASON: _____

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: ☐ APPROVED ☐ DISAPPROVED ☐ OTHER (SEE COMMENTS BELOW)

☐ RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

drip:ltr:005acc02:pmg

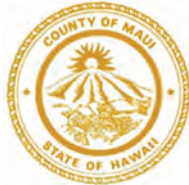
Attachment

MICHAEL P. VICTORINO
Mayor

MOANA M. LUTEY
Corporation Counsel

RICHELLE M. THOMSON
First Deputy

LYDIA A. TODA
Risk Management Officer



DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808)270-7740

February 14, 2022

Mike Molina, Chair
GREAT Committee
200 S. High Street
Wailuku, Hawaii 96793

Memorandum

Re: Intergovernmental Agreement with the U.S. Immigration and Customs Enforcement Homeland Security Investigations (GREAT-42)

I. INTRODUCTION

This memorandum responds to your February 4, 2022 RFLS regarding the proposed Memorandum of Understanding ("MOU") between the County of Maui and the U.S. Immigration and Customs Enforcement Homeland Security Investigations ("HSI") which allows certain Maui Police Department ("MPD") officers to be deputized as Homeland Security Investigations Task Force Officers ("TFOs").

The MOU does not relate to the immigration enforcement operations of Immigration and Customs Enforcement ("ICE"). The MOU states explicitly, in italics, that "*HSI is not conveying the authority to enforce administrative violations of immigration law.*"

The MOU memorializes a cooperative agreement between HSI and MPD to participate on an HSI Task Force focused on enforcing and preventing drug trades and human trafficking. Such participation will provide MPD officers with access to specialized training and experience. In relevant part, under the MOU, HSI agrees to designate certain MPD officers as TFOs and provide appropriate training in "laws, policies, and procedures" for each qualified and designated MPD officer. In return, MPD agrees that only sworn MPD officers who complete the HSI training course and receive an approved designation form would be designated as TFOs.

There is additional confirmation outside of the four corners of the MOU that MPD officers acting as TFOs will not participate in immigration raids, or other

immigration enforcement. The designation form, or ICE Form 73-001, sets forth the various authorities that may be granted to a TFO and any restrictions that may apply. That form is attached to this memorandum as Attachment 2. In Section 14, there is a pre-checked box which indicates that “The TFO is not granted the authority to enforce administrative violations of immigration law.”

HSI Directive 18-02, included as Attachment 3, also provides guidance regarding the designation of MPD officers as TFOs. The Directive provides that MPD officers “may be designated as Customs Officers (excepted) and authorized to perform the full range of law enforcement duties of a Customs Officer, as authorized by an HIS Special Agent in Charge (SAC).” This power is limited because the Directive explicitly provides that “these TFOs are not granted the authority to enforce administrative violations of immigration law under Title 8 or controlled substance violations under Title 21.”

II. RESPONSES TO SPECIFIC QUESTIONS AND CONCERNS

A. Whether the matter is time sensitive.

This matter is not time sensitive. MPD is operating pursuant to an existing 2017 agreement that allows Maui police officers to be TFOs, which is nearly identical to the proposed MOU. The purpose of the new MOU is to restate the existing agreement and include the Body Work Camera (BWC) policy attached to the new MOU. Those policies are included in Attachment 1.

If Council does not approve the amended and restated MOU, MPD will continue to abide by the 2017 agreement, which does not include the BWC policies. MPD may be able to provide additional details as to what consequences that might have for their current work as TFOs. We have been informed that HSI has requested the new, restated agreement to allow officers acting as TFOs to use BWCs in accordance with federal policies.

B. Whether an ordinance similar to San Francisco’s City and County of Refuge ordinance is necessary in conjunction with the agreement.

For the reasons detailed above, it is not necessary to pass such an ordinance in conjunction with approval of the MOU if Council’s intent is to limit MPD officer’s ability to assist ICE with immigration raids or immigration-related arrests. Moreover, the provisions of the San Francisco ordinance may be interpreted to prevent any coordination between County officers and employees and anyone in the Department of Homeland Security, even on non-immigration matters.

If it is Council's desire to introduce an ordinance to clarify that County funds cannot be used to assist ICE in immigration actions, we can draft an such an ordinance. There may be unforeseen consequences to passing such an ordinance, but it should not prevent the County from entering into the revised MOU.

C. The agreement is limited to ICE/HSI and does not extend to other directorates or divisions of ICE.

As described above, the MOU allows deputized officers to perform duties delegated to them, as identified on the designation form. That form explicitly excludes the authority to enforce administrative violations of immigration law.

D. Legal interpretation of "abuse of HSI cross-designation authority."

We interpret this clause to mean that if an MPD officer acts outside of the specific designations on their designation form while performing duties of a TFO, HSI may revoke any authority given to an MPD officer pursuant to the MOU.

E. Legal interpretation of "customs officers are authorized to enforce the full range of federal offenses" and "HSI is not conveying the authority to enforce administrative violations of immigration law."

In accordance with 19 U.S.C. 1589a, as Customs Officers, the TFOs are authorized to enforce the full range of federal law, including violations of other titles of the U.S. Code, such as federal crimes that are not directly customs related. However, in accordance with the language of the MOU and HSI Directive 18-02, the TFOs are not granted the authority to enforce administrative violations of immigration law under Title 8 of the U.S. Code or controlled substance violations under Title 21 of the U.S. Code.

F. Whether proposed resolution can be amended to less prominently reference "ICE."

Yes. If requested, we can provide the GREAT Committee with a new draft resolution that includes all of the forms referenced in this memorandum to resolve any community concerns that this MOU would allow designated MPD officers to perform immigration raids or act as ICE officers to enforce immigration law.

III. RECOMMENDATION AND CONCLUSION

We recommend that our office submit a new proposed resolution approving the MOU that includes language which highlights and identifies the exclusion of authority to enforce administrative violations of immigration laws. We further recommend that Council consider and approve the MOU, so that there is no doubt as to the circumstances in which MPD officers performing duties as TFOs can wear and use their BWCs.

Respectfully,

A handwritten signature in black ink, appearing to read "Keola Whittaker".

Keola R. Whittaker
Deputy Corporation Counsel
County of Maui

ATTACHMENT 1

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: _____

Approved as to Form
and Legality:

KEOLA R. WHITTAKER

Deputy Corporation Counsel

County of Maui

**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(e) 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**

Digitally signed by
DAVID C SHAW
Date: 2021.03.03
14:06:57 -05'00'

Patrick J. Lechleitner
Acting Executive Associate Director
Homeland Security Investigations

ATTACHMENT 2

EXPIRATION DATE:

Expires no later than 2 years from certification date (#10)

HSI Credential Number:

Badge Number:
(if applicable)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement
DESIGNATION, CUSTOMS OFFICER (EXCEPTED) – TITLE 19 TASK FORCE OFFICER
(Homeland Security Investigations Directive 14-02)

Pursuant to the provisions of 19 U.S.C. § 1401(i) and as delegated, and by agreement with your employing agency, ***you are hereby designated a Customs Officer (Excepted) without additional compensation, hereinafter referred to as a Title 19 Task Force Officer (TFO).*** This designation, for the performance of such duties as outlined below, will be in effect while you remain in your present position and location until the expiration date, unless revoked at an earlier date. In performing the duties of a TFO, you will be subject to guidelines, directives, and instructions of the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI). Arrangements will be made for you to receive the training necessary to perform your duties as a TFO according to HSI Directive 14-02, "Law Enforcement Officers Designated to Act as Customs Officers (Excepted) for Investigative Purposes – Domestic", dated May 7, 2014, or as updated.

Duration of Designation: Designations under this Directive are valid for a period of 2 years from the date the TFO Course was completed. Title 19 TFOs may be redesignated for an additional 2 years, without additional training, upon the completion of a new Designation Form, ICE Form 73-001 (this form). Redesignation must be accomplished before the expiration of the original designation. Title 19 TFOs must attend the TFO Course no less than every 4 years to remain designated.

1. TFO's Full Legal Name:		2. Last 4 of Social Security Number:		3. Date of Birth:	
4. Parent Agency (Full Name – NO ACRONYMS): Address _____ Street _____ City _____ State _____ Zip Code _____		4a. Phone Number:		4b. Parent Agency E-mail:	
		4c. ICE or DHS E-mail (Required for Full and Part-time TFOs):			
		5. Parent Agency Position/Rank:		6. Parent Agency Badge Number:	
7. Parent Agency Supervisor:		7a. Phone:		7b. E-mail:	
8. HSI Designated Supervisor:		8a. Phone:		8b. E-mail:	
9. HSI Office Assigned:		10. Certification/Recertification Date (Certification expires 2 years from): (Date of training completion or date recertified by the SAC for an additional 2 years prior to expiration of first 2 years.)			
11. Cancellation/Revoked Date:		Cancellation Authorizing Signature (HSI): (Expires 2 years from date above (#10), if no signature present)			
12. TFO Status: <input type="checkbox"/> Full-Time: A TFO who is co-located with HSI and is working directly for an HSI first- or second-line supervisor for a minimum of 30 hours per week and is significantly contributing to investigations. <i>(ICE or DHS e-mail required)</i> <input type="checkbox"/> Part-Time: A TFO who is co-located with HSI and is working directly for an HSI first- or second-line supervisor for a minimum of 8 hours per week and is significantly contributing to investigations. <i>(ICE or DHS e-mail required)</i> <input type="checkbox"/> On-Call: A TFO who does not meet the standards of either a Part-Time or Full-Time TFO, who is occasionally called upon to assist HSI, including officers working strictly in a uniformed capacity, who does not report directly to HSI. <i>(ICE or DHS e-mail recommended; required to fly armed.)</i>					
13. Authorities Granted: Only the marked duties are authorized for the TFO. <input type="checkbox"/> Carry a firearm, in accordance with federal law, that he or she is authorized and qualified to carry by his or her parent agency while on duty. <input type="checkbox"/> Execute and serve orders, search warrants, arrest warrants, subpoenas, summonses, and other processes issued under the authority of the United States, in accordance with laws administered and/or enforced by HSI. <input type="checkbox"/> Make arrests without warrant for any offense against the United States committed in his or her presence or for a felony, cognizable under the laws of the United States, committed outside his or her presence for which sufficient probable cause exists. <input type="checkbox"/> Perform other law enforcement duties which may be authorized under 19 U.S.C. § 1589a. <input type="checkbox"/> Make seizures of property in compliance with the Constitution of the United States and the Customs laws. <input type="checkbox"/> Conduct customs border searches for merchandise being imported into or exported from the United States, and detain such persons or articles necessary to that end, or as otherwise may be subject to seizure under the laws of the United States. <input type="checkbox"/> Other authorities: _____					

14. Endorsements and Restrictions:

The following marked endorsements and restrictions apply to the TFO:

- ☒ **This designation form is INVALID without accompanying HSI identification and employing agency identification.**
- ☒ The TFO shall follow the Interim ICE Use of Force Policy, dated July 7, 2004, or as updated or superseded.
- ☒ The TFO is not granted the authority to enforce administrative violations of immigration law.
- ☒ The TFO will present for inventory his or her HSI-issued credentials (and badge, if applicable) every 6 months or upon request of the HSI supervisor.
- ☐ Prior to using the authorities granted by this designation, notification will be made to an HSI supervisor or designee. (This restriction is *mandatory for On-Call TFOs*, and is otherwise discretionary.)
- ☐ The TFO is authorized to fly armed while conducting official HSI business. (ICE or DHS e-mail required.)
- ☐ The TFO is authorized to operate a government owned vehicle (GOV) in accordance with HSI policy.
- ☐ Other Endorsements and Restrictions: _____

***Refer to HSI Directive 14-02, "Law Enforcement Officers Designated to Act as Customs Officers (Excepted) for Investigative Purposes - Domestic," dated May 7, 2014, or as updated, for a complete explanation of authorities, endorsements, and restrictions.**

15. TFO's Acknowledgement:

I have read and understand the authorities granted to me and the endorsements and restrictions listed above and in the referenced Directive.

Task Force Officer's Signature

Date

16. Authorizing Officer (HSI SAC):

Printed Name

Title

X

Signature

Date

PRIVACY ACT STATEMENT

AUTHORITY: Information about you, as a Task Force Officer (TFO) Customs Officer, is collected and maintained pursuant to the provisions of 19 U.S.C. § 1401(i), appropriate re-delegations, and by agreement with your employing agency. Through the Title 19 program, HSI enters into agreements with federal, state and local law enforcement agencies to delegate to the agencies' Law Enforcement Officers (LEOs) the authority to enforce certain federal laws. As a result, HSI is authorized to delegate the full range of law enforcement duties of a Customs Officer to LEOs in federal, state and local law enforcement agencies.

PRINCIPAL PURPOSE(S): Your information is collected on this form to acknowledge your selection and designation as a Customs Officer.

ROUTINE USE(S): Pursuant to the routine uses published in DHS/ALL-023 Department of Homeland Security Personnel Security Management System of Records (February 23, 2010 75 FR 8088), HSI may share your information with federal, state, local, tribal, foreign, or international agencies if the information is relevant and necessary to HSI's decision to delegate authority or issue a security clearance to you.

DISCLOSURE: The disclosure of information on this form is voluntary; however, failure to provide the information requested will disqualify you from further participation in the Title 19 Program.

ATTACHMENT 3

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

**HSI Directive 18-02: Law Enforcement Officers Designated to Act as Customs
Officers (Excepted) for Investigative Purposes**

Issue Date: July 30, 2018
Effective Date: July 30, 2018
Superseded: U.S. Immigration and Customs Enforcement (ICE) Office of Investigations (OI) Directive 05-007, "Foreign Personnel Designated to Act as Customs Officers (Excepted) for Investigative Purposes," dated May 3, 2005; Homeland Security Investigations (HSI) Directive 14-02, "Law Enforcement Officers Designated to Act as Customs Officers (Excepted) for Investigative Purposes – Domestic," dated May 7, 2014; and HSI memorandum, "Restructuring the HSI Task Force Officer Program," dated May 19, 2017, including its Appendix, "Parameters for Use of "Initiative Based" Task Force Officers."

Federal Enterprise Architecture Number: 306-112-002b

1. **Purpose/Background:** This Directive provides guidance regarding the designation of federal, state, local, tribal, and foreign law enforcement officers (LEOs) to perform the duties of a Customs Officer (Excepted), referred to as "Title 19 Cross-Designated Task Force Officers (TFOs)" or "Cross-Designated TFOs," on behalf of HSI.
2. **Policy:** It is the policy of HSI that, pursuant to Title 19, United States Code (U.S.C.), Section 1401(i), sworn LEOs from state, local, tribal, and foreign agencies may be designated as Customs Officers (Excepted) and authorized to perform the full range of law enforcement duties of a Customs Officer, as authorized by an HSI Special Agent in Charge (SAC). Cross-Designated TFOs may exercise this authority only when operating on behalf of HSI. Cross-designation augments, but does not affect or supplant, any authorities granted to TFOs by their parent agency.

In accordance with 19 U.S.C. § 1589a, as Customs Officers, Title 19 Cross-Designated TFOs are federal LEOs and are authorized to enforce the full range of federal law, including violations of other titles of the U.S. Code, including, but not limited to, Title 18 and Title 31. However, these TFOs are not granted the authority to enforce administrative violations of immigration law under Title 8 or controlled substance violations under Title 21.

- 2.1. **Cross-designation of Other Federal LEOs:** Federal LEOs will not receive Title 19 cross-designation. However, all federal TFOs shall attend the training set forth in this Directive, be bound by its policy, and act under the direction of the HSI SAC when conducting investigations directed by HSI.

- 2.2. Federal LEOs Who Already Retain "Customs Officer" Designations:** U.S. Customs and Border Protection Officers, U.S. Border Patrol Agents, and any other LEOs who are already legally designated as Customs Officers by their parent agency, as set forth in 19 U.S.C. § 1401(i), will not be cross-designated by HSI. This includes ICE Enforcement and Removal Operations officers who maintain limited Title 19 authority. However, if serving as HSI TFOs, these LEOs shall attend the training set forth in this Directive and be bound by its policy, and act under the direction of the HSI SAC when conducting investigations directed by HSI. (Note: For further guidance on these matters, contact the Unit Chief, Contraband Smuggling Unit (CSU).)
- 2.3. Demand for Assistance of Other LEOs:** Pursuant to 19 U.S.C. § 507(a)(2), as Customs Officers HSI SAs and Cross-Designated TFOs have the authority to demand the assistance of any person in the execution of their duties. This authority may be used to demand the assistance of other LEOs who may be working with the HSI SA or the Cross-Designated TFO. (Note: Questions regarding this authority may be directed to the ICE Office of the Principal Legal Advisor (OPLA).)
- 3. Definitions:** The following definitions apply for the purposes of this Directive only:
- 3.1. Background Investigation:** A term used to describe the various types of personnel security investigations into an individual's history which are used to determine the individual's suitability or fitness and/or to make a determination as to whether the individual is eligible for access to Classified National Security Information at the appropriate level for the position. Background investigations are conducted using a variety of methods including the completion of questionnaires, electronic inquiries, written or telephonic inquiries, or through personal contact with individuals.
- 3.2. Badge and Credential Coordinator (BCC):** An HSI employee in each domestic HSI area of responsibility (AOR) designated by the SAC to manage the needs of the local field office's employees regarding badges, seals, and credentials.
- 3.3. Cross-Designated TFO:** A LEO who is designated by an HSI SAC to perform the duties of a Customs Officer (Excepted) for investigative purposes. Cross-Designated TFOs must complete the training set forth in this Directive.
- 3.4. Customs Officer (Excepted):** Any person designated by the Secretary of the Department of Homeland Security (DHS), or his or her designee, authorized to perform the full range of law enforcement duties of a Customs Officer (Excepted) who does so without additional compensation. This term also indicates that there may be restrictions on how much authority is delegated or how the delegated authority may be used. Customs Officers (Excepted) are often referred to as "cross-designated," and this designation is often referred to as "Title 19 authority."
- 3.5. Full-Time TFO:** A sworn LEO who is co-located with and assigned to an HSI-led task force or group, significantly contributing to multiple HSI investigations and reporting to

an HSI supervisor. Full-Time TFOs are cross-designated with Title 19 authority and are granted facilities/information technology systems access, thus receiving HSI TFO Badge and Credentials and a Personal Identity Verification (PIV) card.

- 3.6. **HSI TFO Course (TFO Course):** A curriculum designed by CSU at HSI Headquarters (HQ) and delivered by each HSI office to educate and enhance the ability of TFOs to leverage their respective parent agency's authorities along with the authority granted to them by HSI.
- 3.7. **HSI TFO Badge and Credentials:** The badge and credentials issued to state and local TFOs. Federal TFOs already possess badges and credentials declaring their authorities. (Note: TFOs and other Task Force Personnel (TFP) may be issued other forms of identification during their assignment to HSI. The inventory, control, and reporting relative to these items will be governed by relevant DHS and ICE policy.)
- 3.8. **ICE Badge and Credential Program Manager:** The designated ICE official in the Office of Professional Responsibility (OPR) Security Management Unit at ICE HQ who is responsible for the overall management of the operational and administrative functions of the ICE Badge and Credential program.
- 3.9. **Initiative-Based TFO:** An HSI Initiative-Based TFO is a TFO assigned to support an AOR-specific, HQ-approved investigative program for a specific initiative that is conceived by the local SAC field office and submitted via memorandum to HSI HQ for approval and concurrence by the Assistant Director (AD), Investigative Programs, and the AD, Domestic Operations.
- 3.10. **National TFO Coordinator:** An HSI SA assigned to CSU at HSI HQ who coordinates and manages the HSI TFO Program (TFOP). The National TFO Coordinator is the primary HQ point of contact for field TFO Coordinators.
- 3.11. **Parent Agency:** The employing law enforcement agency of the TFO assigned to HSI.
- 3.12. **Part-Time/Case Specific TFO:** A sworn LEO assisting in a specific HSI investigation that warrants routine and regular access to HSI facilities and/or information technology systems. Part Time/Case-Specific TFO appointments are documented via a SAC-approved memorandum that provides an ongoing HSI case number and executive summary, along with prosecutor and HSI supervisor contact information. Part Time/Case-Specific TFOs will be cross-designated and may or may not receive HSI TFO Badge and Credentials, based on operational needs.

(Note: Should there be an operational need for the Part Time/Case-Specific TFO to be issued HSI TFO Badge and Credentials, the nominating SAC must provide a specific justification via a memorandum for approval by the Deputy Assistant Director, Illicit Trade, Travel and Finance Division. Additionally, should a Part Time/Case Specific TFO require unescorted access to HSI facilities and/or access to information technology

systems, it will be incumbent upon the sponsoring SAC office to procure and issue a PIV card to the TFO.)

- 3.13. **State and Local Overtime (SLOT):** Dedicated federal funding for state and local LEOs working with HSI. (Note: SLOT funding is not directly predicated on TFO metrics or the designation of a state/local LEO as a Cross-Designated TFO. TFOs who are not cross-designated may still receive SLOT funding. Domestic Operations and the Asset Forfeiture Unit oversee the SLOT program and can address any questions and concerns.)
- 3.14. **Task Force Officer (TFO):** A sworn domestic or foreign LEO assigned to, or assisting, an HSI-led task force or group on a regular basis.
- 3.15. **Task Force Personnel (TFP):** Non-sworn law enforcement personnel, such as intelligence analysts and National Guard members who are assigned to HSI-led task forces or groups. TFP must attend the TFO Course but will not be cross-designated or receive HSI TFO Badge and Credentials. TFP may only be classified as Full-Time or Part-Time. Additionally, should TFP require unescorted access to HSI facilities and/or access to information technology systems, it will be incumbent upon the sponsoring SAC office to procure and issue a PIV card to each individual.
- 3.16. **TFO Assistant Special Agent in Charge (ASAC):** An ASAC designated within each SAC office who manages the HSI AOR TFOP and who serves as the primary HQ and CSU management point of contact regarding TFO matters.
- 3.17. **TFO Coordinator:** An HSI Special Agent (SA) within each domestic HSI AOR who coordinates and manages the AOR TFOP.
- 3.18. **TFO Data Call:** An annual survey of all HSI offices that compiles information regarding all TFOs/TFP.

4. Responsibilities.

- 4.1. The **Executive Associate Director (EAD)** of HSI is responsible for the oversight of the policy and procedures in this Directive and also for the oversight of all TFOs/TFP working within HSI.

(Note: In ICE Delegation Order 04-006, "Authority for Designating Customs Officers within U.S. Immigration and Customs Enforcement," dated March 26, 2004, or as updated, the Director of ICE delegated the authority to designate persons to act as Customs Officers (Excepted) to the EAD of HSI (then the Director of the Office of Investigations. This authority may not be delegated below the level of a SAC.)

- 4.2. The **Assistant Director (AD), Investigative Programs**, is responsible for collecting and transmitting information regarding the TFOP to HSI leadership and approving all requests for AOR-specific Initiative-Based TFOs (see Section 3.9).

4.3. The Unit Chief, CSU, is responsible for:

- 1) Designating a National TFO Coordinator;
- 2) Managing and providing oversight of the TFOP;
- 3) Maintaining a roster of current TFO Coordinators;
- 4) Reviewing and validating all cross-designation requests;
- 5) Reviewing TFO Badge and Credential requests;
- 6) Approving and processing HSI TFO Badge and Credential requests and TFOs'/TFP's requests for access to ICE systems;
- 7) Approving and processing TFO background investigation requirements/requests;
- 8) Providing TFO Coordinators with a standardized curriculum and training materials for the TFO Course; and
- 9) Updating training materials related to the TFO Course on an annual basis, or as needed.

4.4. The National TFO Coordinator is responsible for:

- 1) Managing the TFOP;
- 2) Coordinating and facilitating delivery of TFO Course materials;
- 3) Updating TFO Course materials annually;
- 4) Processing requests and confirming available funding for HSI TFO Badge and Credentials and any associated processes;
- 5) Initiating the periodic and routine national inventory of HSI TFO Badge and Credentials;
- 6) Ensuring the prompt return of revoked or cancelled HSI TFO Badge and Credentials;
- 7) Serving as the primary point of coordination with OPR for background investigations of TFOs;
- 8) Coordinating all TFO Badge and Credential matters with the ICE Badge and Credential Unit; and

- 9) Compiling the information provided by HSI offices via the TFO Data Call.

4.5. Special Agents in Charge (SACs) are responsible for:

- 1) Cross-designating TFOs;
- 2) Management and oversight of all TFOs/TFP within the AOR;
- 3) Strategic planning and operation of the local TFOP;
- 4) Delivering the TFO Course locally;
- 5) Providing and certifying instructors who are subject matter experts (SMEs) to deliver the TFO Course;
- 6) Granting TFO/TFP access to ICE systems, equipment, and sensitive information;
- 7) Designating HSI personnel from their AOR to serve as the TFO ASAC and the TFO Coordinator, and advising the Unit Chief, CSU, of any changes to these designations;
- 8) Ensuring that TFOs/TFP are in good standing with their parent agency; and
- 9) Removing any TFOs/TFP if sufficient derogatory information is discovered.

4.6. TFO Assistant Special Agents in Charge (ASACs) are responsible for:

- 1) Implementing the strategic planning and operation of the local TFOP as set forth by the SAC;
- 2) Managing the delivery of the TFO Course locally;
- 3) Overseeing the administrative issues and requests that grant TFOs/TFP access to ICE systems, equipment, and sensitive information; and
- 4) Serving as the primary management point of contact with HQ for matters regarding TFOs/TFP.

4.7. HSI Supervisors who have TFOs/TFP under their supervision are responsible for:

- 1) Completing and forwarding all necessary TFO/TFP paperwork, including confirmation of good standing, training certifications, PIV issuance documents, exit documentation, etc.;
- 2) The day-to-day supervision of TFOs/TFP and managing TFO/TFP activities and performance;

- 3) Ensuring proper familiarization of TFOs/TFP with HSI resources, including tasks such as the use and access of appropriate information systems;
- 4) Ensuring that TFOs meet the training requirements for cross-designation, if so required;
- 5) Completing the annual TFO Data Call to accurately account for the TFOs/TFP assigned to their supervision;
- 6) Assisting TFOs/TFP who require ICE e-mail addresses and databases;
- 7) Inventory of any and all items issued to HSI TFOs in the Firearms, Armor, and Credential Tracking System (FACTS), as required; and
- 8) Ensuring that the proper training, discussion, and deconfliction of tactics, use of force policies, and other protocols have occurred before a TFO deploys on enforcement operations with HSI.

4.8. Local TFO Coordinators are responsible for:

- 1) Submitting all necessary TFO/TFP paperwork, including confirmation of good standing, training certifications, PIV issuance documents, exit documentation, etc.;
- 2) Coordinating and facilitating delivery of the TFO Course;
- 3) Ensuring that the TFO Course utilizes the most recent materials;
- 4) Ensuring that the local SMEs providing instruction for the TFO Course meet the necessary requirements as set forth in this Directive;
- 5) Ensuring that the local SAC has approved the SMEs to act as instructors for the TFO Course;
- 6) Ensuring that all necessary documents regarding HSI TFO Badge and Credentials are completed, filed, and updated, as applicable;
- 7) Ensuring the periodic and routine inventory of HSI TFO Badge and Credentials;
- 8) Ensuring the prompt return of revoked or cancelled HSI TFO Badge and Credentials;
- 9) Ensuring the completion of initial vetting and background checks for TFOs/TFP within their AOR;
- 10) Coordinating all HSI TFO Badge and Credential matters with the field office BCCs and the National TFO Coordinator;

- 11) Serving as the liaison between field TFOP elements and the CSU Unit Chief;
- 12) Providing a copy of this Directive to all TFOs, along with the first- and second-line HSI managers who supervise TFOs; and
- 13) Compiling the information provided by HSI supervisors via the annual TFO Data Call.

4.9. The OPR Personnel Security Unit (PSU) is responsible for:

- 1) Receiving and processing security forms to initiate the required background investigations and reinvestigations;
- 2) Adjudicating the results of pre-employment inquiries for entry on duty (EOD) date determinations, final determinations, and vetting in accordance with Homeland Security Presidential Directive (HSPD)-12, "Policy for a Common Identification Standard for Federal Employees and Contractors," dated August 27, 2004.
- 3) Scheduling, tracking, and receiving background investigations and reinvestigations of TFO personnel, as appropriate;
- 4) Notifying the National TFO Coordinator, as appropriate, of all TFO fitness determinations;
- 5) Coordinating, as appropriate, with the National TFO Coordinator, on actions to take whenever information is received that appears to raise a question concerning the continued fitness of TFOs; and
- 6) Ensuring compliance with all applicable laws, rules, and regulations.

4.10. Cross-Designated TFOs are responsible for being aware of all authorities granted to them under the law by their own agency, as well as the authorities granted to them by HSI. Cross-Designated TFOs are also responsible for:

- 1) Utilizing the authority granted to them by HSI, along with the authorities granted to them by their parent agencies, to investigate federal and state/local violations of law, as appropriate;
- 2) Leveraging resources, facilitating communication, conducting deconfliction, and serving as a conduit between HSI and their parent agencies;
- 3) Serving as SMEs on cases prosecuted in state and local courts;
- 4) Safeguarding HSI TFO Badge and Credentials from unauthorized use and/or theft;

- 5) Participating in a physical inventory of issued items when required or requested by a supervisor; and
- 6) Providing requested information for the annual TFO Data Call to their HSI supervisor and/or TFO Coordinator.

- 4.11. The **Badge and Credential Coordinator (BCC)** is responsible for coordination with the local TFO Coordinator and the National ICE Badge and Credential Program Manager to order, issue, maintain, and inventory TFO badges and credentials as appropriate.
- 4.12. The **HSI Attaché** will coordinate the Leahy vetting requirements of the candidates with DOS at the foreign post. The Attaché will report the results of the Leahy vetting to the SAC and the Unit Chief, CSU.
- 4.13. **HSI SAs, TFOs, and Other Personnel**, as appropriate, are responsible for complying with the provisions of this Directive.

5. Procedures/Requirements.

5.1. General Requirements.

- 1) **Initial TFO/TFP Vetting:** Prior to any substantive or prospective connectivity/case work with the HSI-led task force or group, the HSI supervisor must query the TFO/TFP parent agency regarding any pertinent derogatory information in the TFO/TFP work history. (Note: A letter or e-mail response from the parent agency stating that the TFO/TFP is in "good standing" meets the requirements.)
- 2) **TFO/TFP Background Investigation:** All TFOs and TFP must be vetted to the PIV standard. The background investigation includes, at a minimum, but is not limited to, a National Agency Check with Inquiries. Any requests for PIV issuance and/or background investigations for TFOs/TFP are to be facilitated and coordinated by the National TFO Coordinator and OPR PSU, at the HQ level only.

Additionally, national security clearances for state, local, and tribal personnel, including all TFOs/TFP, shall be issued in accordance with Executive Order 13549, "Classified National Security Information Program for State, Local, Tribal and Private Sector Entities," dated August 18, 2010, and the guidance in the DHS Implementing Directive by the same title, dated February 2012. The DHS HQ State, Local, Tribal, and Private Sector Security Management Division is responsible for processing such security clearances.

- 3) **HSI TFO Badge and Credentials:** The National TFO Coordinator, along with the ICE Badge and Credential Program, will coordinate the issuance of all HSI TFO Badge and Credentials to Cross-Designated state and local TFOs.

- 4) Requesting HSI TFO Badge and Credentials: The HSI SAC will request HSI TFO Badge and Credentials from the Unit Chief, CSU, by transmitting the following information via the TFO Submission Database:
 - a) A completed and signed "TFO Cross-Designation Training Certification" memorandum;
 - b) A completed and signed "Badge and Credential Request for Task Force Officer(s)" memorandum;
 - c) A completed and signed ICE Form 73-001, "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer";
 - d) A signed Memorandum of Understanding (MOU) with the TFO's parent agency (see ICE Form 73-002 for a template of the MOU); and
- 5) Issuing HSI TFO Badge and Credentials: The HSI SAC will issue HSI TFO Badge and Credentials only to Full-Time state and local TFOs assigned to an HSI-led task force or group. HSI TFO Badge and Credentials are identified by a control number.
- 6) Tracking and Inventory of HSI TFO Badge and Credentials: HSI TFO Badge and Credentials are tracked in FACTS and are assigned to the TFO's HSI supervisor for FACTS inventory purposes.
- 7) Return of HSI TFOs' Badges and Credentials:
 - a) All HSI TFO Badges and Credentials assigned to TFOs who have separated or ended their tenure must be returned to the local TFO Coordinator.
 - b) The TFO Coordinator will return these items to the ICE Badge and Credential Unit, One Broad Street, Suite 200, Bethlehem, PA 18018, and include a hard copy of the cancelled ICE Form 73-001. The TFO Coordinator will send an e-mail to the TFO Mailbox with the tracking number of the parcel sent to the ICE Badge and Credential Unit. (Note: Questions regarding the return of a TFO's Badge and Credentials should be addressed to the National TFO Coordinator.)
- 8) Request for Retaining HSI TFO Credentials: In order for an HSI TFO's credentials to be cancelled and returned to the TFO, the TFO must have been assigned to HSI in a full-time capacity and have spent a minimum of 60 months as an HSI TFO.
- 9) Request for Retaining HSI TFO Badges in Lucite: To retain his or her HSI TFO Badge in lucite, the TFO must have been assigned to HSI in a full-time capacity and have spent a minimum of 60 months as an HSI TFO.
- 10) Annual TFO Data Call: The Annual TFO Data Call will be transmitted via a tasking from Domestic Operations during the second quarter of each fiscal year, providing a

period of 4 weeks for offices to respond. The data call will require each HSI office to provide and/or confirm detailed information regarding all TFOs/TFP in the AOR.

- 11) HSI TFO Course (TFO Course): All TFOs and TFP are required to attend the first available TFO Course upon PIV clearance required by HSPD-12. The TFO Course is to be administered at offices semiannually during the months of February and August when an office is onboarding new TFOs or when recertifying current TFOs. All documentation must be provided to the National TFO Coordinator no later than 30 days prior to TFO Course participation. Additionally, all Cross-Designated TFOs will be required to participate in legal training recertification every 2 years, beginning from the date of initial TFO Course completion. (Note: The TFO Course may be administered locally via video teleconference.)
- 12) TFO Course Curriculum and Instructor Requirements: The TFO Course provides instruction in a number of law enforcement topics to facilitate TFO/TFP immersion in the HSI environment regardless of investigative concentration or programmatic assignment. The TFO Course will be a minimum of 28 hours of instruction as delineated below.

(Note: TFOs may only be cross-designated upon achieving a minimum score of 70% on a standardized test regarding the provided blocks of instruction.)

- a) Customs Law: A total of 8 hours of instruction on Customs Law in a format approved by OPLA's Criminal Law Section (CLS). More than one instructor may be used for this block of instruction; at least one instructor must be a current or former OPLA embedded attorney, or OPLA CLS attorney, with at least 6 months experience.
- b) Use of Force: A total of 2 hours of instruction regarding flying armed and the Interim ICE Use of Force Policy, dated July 7, 2004, or as updated or superseded, as it applies to HSI TFOs. The instructor must be an ICE Senior Firearms Instructor or an ICE-certified Firearms Instructor.
- c) Integrity Awareness: A total of 2 hours of TFO-specific integrity instruction from OPR. The instructor must be an OPR supervisor or an OPR Special Agent (SA) with at least 1 year of OPR investigative experience.
- d) HSI Programs and Resources: The TFO Course will consist of a minimum of 16 hours of HSI instruction related to HSI programs and resources available to TFOs and the knowledge, skills, and abilities essential to perform HSI's law enforcement mission. Instructor qualifications for the TFO Course are set forth below. It is highly encouraged that experienced HSI TFOs be included as instructors.
 - i) Introduction to HSI: The instructor must be an HSI supervisor. The TFO Coordinator should be present during this block as well.

- ii) Contraband/Narcotics/Border Enforcement Security Task Force (BEST): The instructor must be an HSI supervisor who currently supervises contraband or narcotics investigations, or a BEST group, or an HSI SA or TFO with at least 3 years of HSI contraband smuggling or BEST investigative experience.
- iii) Gang Investigations: The instructor must be an HSI supervisor who currently supervises public safety or gang investigations, or an HSI SA or TFO with at least 3 years of HSI public safety or gang investigative experience.
- iv) Human Smuggling/Human Trafficking: The instructor must be an HSI supervisor who currently supervises public safety, human smuggling, or human trafficking investigations, or an HSI SA or TFO with at least 3 years of HSI public safety, human smuggling, or human trafficking investigative experience.
- v) Firearms Smuggling/Counterproliferation: The instructor must be an HSI supervisor who currently supervises counterproliferation or firearms smuggling investigations, or an HSI SA or TFO with at least 3 years of HSI counterproliferation or firearms smuggling investigative experience.
- vi) Commercial Fraud/Intellectual Property Rights: The instructor must be an HSI supervisor who currently supervises commercial fraud and intellectual property rights (IPR) investigations, or an HSI SA or TFO with at least 3 years of HSI commercial fraud or IPR investigative experience.
- vii) Organized Crime Drug Enforcement Task Force (OCDETF): The instructor must be a field office's OCDETF Coordinator or an HSI supervisor who currently or recently has supervised an OCDETF investigation, or an HSI SA or TFO working on a current or recent OCDETF investigation.
- viii) Financial: The instructor must be an HSI supervisor who currently supervises financial crimes investigations, or an HSI SA or TFO with at least 3 years of HSI financial crime investigative experience.
- ix) TECS/Seized Asset and Case Tracking (SEACATS)/Investigative Case Module (ICM)/Data Systems: The instructor must be the field office's TFO Coordinator, an HSI supervisor, or an HSI SA with at least 3 years of HSI investigative experience, or an HSI IRS with at least 3 years of HSI intelligence research experience.
- x) Confidential Informant (CI) Policy: The instructor must be the field office's Field Confidential Informant Program Administrator, an HSI

supervisor, or an HSI SA who has been a CI Control Agent for at least 12 months, with at least 3 years of HSI investigative experience.

- xi) Undercover Policy/Certified Undercover Operations (CUC): The instructor must be a current or former HSI CUC-supervisor, or HSI CUC Program Manager who has successfully completed the Undercover Managers School (UCMS), or an HSI Group Supervisor who has successfully completed UCMS.
- xii) Technical Operations: The instructor must be an HSI supervisor who currently supervises the office's technical enforcement operations program, an HSI Technical Enforcement Officer, or an HSI SA or a TFO who is a Designated Technical Agent.
- xiii) Title III Judicially Authorized Intercepts: The instructor must be an HSI supervisor or an HSI SA or a TFO who has been the supervisor, affiant, case agent, or co-case agent on an HSI investigation involving an HSI judicially authorized electronic interception operation.
- xiv) Asset Sharing/SLOT: The instructor must be the field office's HSI Asset Identification and Removal Supervisor, an HSI Program Manager, or an HSI supervisor, an HSI SA, or a TFO who handles or is experienced with asset sharing/SLOT programs for a field office.
- xv) HSI Forensic Laboratory: The instructor must be an HSI SA or a supervisor with in-depth knowledge of the laboratory's capabilities.
- xvi) Special Operations Division: The instructor for this course will be a staff coordinator from HSI's staff at the multiagency Special Operation Division. If an HSI Staff Coordinator is not available, TFO Coordinators can coordinate with CSU to identify an approved instructor on a case-by-case basis.
- xvii) Evidence Procedures and DHS Forms 6051: The instructor for this course will be the local Seized Property Specialist, the TFO Coordinator, an HSI Supervisor, or an HSI SA or TFO with at least 3 years of HSI investigative experience with a strong familiarity of evidence procedures and the applicable DHS Forms 6051.
- xviii) Other Modules Not Covered Here: Other areas of interest or investigative programs required by the curriculum and not specified above must be taught by the TFO Coordinator, an HSI supervisor, or an HSI SA or a TFO with at least 3 years of HSI investigative experience with demonstrated subject matter expertise on that topic.

- 13) **Certification of Training:** Within 30 days of completion of the TFO Course, the HSI SAC must send a memorandum to the Unit Chief, CSU, certifying that the provided course contained all required components and that all instructors were in conformity with this Directive. The SAC must also attach a copy of the agenda (including instructor(s)' names and corresponding course titles) and a completed roster for the course, including all pertinent TFO/TFP information (name, last four digits of the Social Security Number, date of birth, and parent agency). Requests for cross-designation will not be accepted without this certification.
- 14) **Memorandum of Understanding (MOU):** Prior to TFO Course attendance, HSI SACs are required to transmit an executed MOU (ICE Form 73-002) with each prospective TFO's parent agency. The MOU will outline the HSI duties that the TFO will be authorized to perform upon successful completion of training and his or her role in HSI. Where an MOU is already executed between HSI and the parent agency, a new MOU is not required.
- 15) **Designation and Issuance of the Designation Form:** All authorized designations will be documented in writing via ICE Form 73-001, executed by the HSI SAC.
- a) ICE Form 73-001 sets forth the authorities that may be granted to a TFO (Section 13 of the form) and any endorsements and restrictions (Section 14 of the form) that apply. The SAC should be familiar with the endorsements and restrictions and may limit the scope of the designation to certain activities and/or within a particular AOR by annotating ICE Form 73-001. Unless otherwise limited on ICE Form 73-001, the Cross-Designated TFO will have the same authority as HSI SAs when enforcing customs laws. Use of these authorities shall be coordinated by the respective TFO's HSI supervisor.
 - b) Unless otherwise limited on the Designation Form (ICE Form 73-001), the authority of a Cross-Designated TFO is valid anywhere within the United States, its territories, or customs waters, and may be exercised as such.
 - c) Cross-Designated TFOs may use the authority granted by their designation only when performing official HSI duties.
 - d) Cross-Designated TFOs must immediately contact the assigned HSI supervisor when their employment status within their agency or department changes, including, but not limited to, suspension, promotion, retirement, reassignment, or resignation.
- 16) **Duration of Cross-Designation:** TFO appointments as Customs Officers (Excepted) under this Directive are valid for as long as the TFO remains assigned to HSI, provided that he or she attends legal training every 2 years upon receiving cross-designated status. A new ICE Form 73-001 must be executed upon each recertification. All Part Time/Case-Specific TFO appointments expire 1 year from

the date of initial SAC approval and can be extended as operationally required by the approving SAC on a yearly basis with concurrence from CSU.

- 17) Revocation or Cancellation of Designation: The SAC is responsible for ensuring that ICE Form 73-001 is filed for, and HSI TFO Badge and Credentials are issued to, only current TFOs, and that revoked or expired HSI TFO Badge and Credentials are returned to the BCC and entered into FACTS.

- a) Cross-designation may be revoked at any time at the discretion of the SAC, or if the TFO separates from the parent agency, is transferred outside the SAC's AOR, or if his or her parent agency terminates the executed MOU.
- b) When revoked or expired, the issuing HSI SAC or designee must collect the HSI TFO Badge and Credentials and any other identification or equipment as necessary.

- 18) Accountability regarding ICE Form 73-001 and HSI TFO Badge and Credentials: Each HSI office must maintain original copies of ICE Form 73-001 for the duration of the TFO's assignment to HSI.

- a) SACs will review, on a biannual basis, all ICE Forms 73-001 and HSI TFO Badges/Credentials issued by their office. Additionally, BCCs, in conjunction with the respective Group Supervisors, are responsible for physically inventorying and verifying the HSI TFO Badge and Credentials during the FACTS Fiscal Annual Inventory.
- b) The loss or theft of any HSI TFO Badge and Credentials must be immediately reported to the issuing HSI SAC, the National TFO Coordinator, and the ICE BCC. Also, the issuing HSI SAC, or his or her designee, must follow the procedures outlined in Attachment A, "Procedures for Reporting Lost/Stolen Law Enforcement Badges, DHS Seal Badges, and Credentials," of ICE Directive 3002.1, "ICE Badge and Credential Program," dated January 12, 2010, or as updated or superseded.

- 19) Other Items Issued to TFOs/TFP: All property issued to TFOs/TFP during their tenure with HSI, including, but not limited to, identification documents, hand-held radios, and electronic equipment, will be governed by existing and applicable HSI policies regarding the issuance, control, and inventory of property, and related reporting requirements.

5.2. Initiative-Based TFOs.

- 1) Approval Memo: A memorandum to HSI HQ for approval and concurrence by the AD, Investigative Programs, and the AD, Domestic Operations, must be submitted for designation of Initiative-Based TFOs.

a) All submissions must:

- i) Provide a purpose, scope, and priority of operations to be effected during a set time period not to exceed 12 months from the date of HSI HQ approval, with yearly renewals requested via separate memoranda;
- ii) Delineate clear HSI and partner authorities to be executed within the scope of the initiative;
- iii) Contemplate and address the investigative plan for prospective initiative generated cases;
- iv) Retain an articulable and specific need for the use of TFOs in support of the initiative and address any issues regarding the co-location, training, credentialing, and access of said TFOs.

b) Furthermore, submissions should seek to reflect:

- i) An established oversight and coordination structure with regular input from all participating agencies;
- ii) Written concurrence and active prosecutorial participation (via direct assignment of personnel or participation in oversight structure) from respective United States Attorneys' Offices and state/local prosecuting authorities, specifically regarding prospective seizures, arrests, and investigations;
- iii) The existence of MOUs (ICE Forms 73-002) with all participating agencies or the potential for same;
- iv) The use of SLOT funding, seizure/forfeiture processes, and derivative equitable sharing;
- v) The assignment or prospective assignment of participating personnel and derivative roles therewith;
- vi) Clear reporting and coordination metrics regarding investigative leads, seizures, arrests, case openings, etc.; and
- vii) The disposition of any potential liability that may be incurred by TFOs in connection with law enforcement efforts.

5.3. Foreign TFOs.

- 1) Pursuant to 19 U.S.C. § 1401(i), foreign LEOs may be cross-designated as Customs Officers (Excepted) and authorized to perform the full range of law enforcement

duties of a Customs Officer, as described herein and as authorized by the SAC. In order to be cross-designated as a Customs Officer (Excepted), a foreign LEO must be a full-time sworn LEO assigned to an HSI-led task force on a full-time basis. Once cross-designated, and in accordance with the endorsements and restrictions granted on ICE Form 73-001, such Cross-Designated TFOs may transport and possess their parent agency-issued firearms and ammunition in the United States. This designation shall not authorize officers to carry a firearm if they are not authorized by their parent agency.

- 2) **Additional Vetting:** In addition to all vetting and background checks conducted by OPR, foreign cross-designated TFOs must undergo "Leahy Vetting" conducted by the U.S. Department of State (DOS) and required for all foreign government officials receiving assistance (including training) on behalf of the United States, as per the Foreign Assistance Act of 1961, as amended. The HSI Attaché will coordinate the Leahy vetting requirements of the candidates with DOS at the foreign post. The Attaché will report the results of the Leahy vetting to the SAC and the Unit Chief, CSU.
- 3) A course of instruction for foreign TFOs designed by OPLA provides the prospective foreign TFOs with 8 hours of instruction in U.S. law. Foreign TFOs must successfully complete this course (with a passing score of 70% on a standard examination) in order to attend the HSI TFO Course and receive Cross-Designation.
- 4) **Foreign TFO Notification/Coordination:** The Unit Chief, CSU, and the National TFO Coordinator must be notified at the earliest practicable time of the intent to solicit, vet, train, cross-designate, or recertify foreign TFOs.
- 5) Foreign TFOs are not authorized to fly armed while conducting official HSI business within the United States.
- 6) Foreign cross-designated TFOs may be authorized to operate a government-owned vehicle, but may not be authorized home-to-work transportation.

5.4. Communications: All communications regarding TFOs/TFP will be processed from the field via the local TFO Coordinator or TFO ASAC to the National TFO Coordinator.

5.5. Accountability: In an effort to ensure accountability at all levels of the program, the TFOP will participate in the Self-Inspection Program (SIP), administered on an annual basis by the Management Inspections Unit in OPR. In addition to the SIP, CSU will conduct annual audits at selected field offices to ensure compliance with this Directive.

6. Recordkeeping.

- 1) CSU will maintain and archive the results of annual TFO Data Call(s).
- 2) HSI Offices will maintain the signed Designations (ICE Forms 73-001), the signed


Title 19 MOUs (ICE Form 73-002), the Customs Law written tests and results, and the Certifications of Training for no less than 5 years from the TFOs' separation from HSI.

7. Authorities/References.

- 7.1. Homeland Security Act of 2002, Pub. L. No. 107-296, § 403, 116 Stat. 2135 (2003).
- 7.2. 5 U.S.C. § 3374, Assignments of employees from State or local governments.
- 7.3. 19 U.S.C. § 1401(i), Officer of the customs; customs officer.
- 7.4. 19 U.S.C. § 1589a. Enforcement authority of customs officers.
- 7.5. Federal Information Processing Standards Publication Pub 201-1, Personal Identity Verification (PIV) of Federal Employees and Contractors," dated March 2006, or as updated.
- 7.6. HSPD-12, "Policy for a Common Identification Standard for Federal Employees and Contractors," dated August 27, 2004.
- 7.7. DHS Delegation Order 7030.2, "Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement," dated November 13, 2004, or as updated.
- 7.8. "DHS Sensitive Systems Policy Directive 4300A," Version 12.01, dated February 12, 2016, or as updated.
- 7.9. DHS Instruction Handbook 121-01-007, "The Department of Homeland Security Personnel Suitability and Security Program," dated June 18, 2009, or as updated.
- 7.10. ICE Delegation Order 04-006, "Authority for Designating Customs Officers within U.S. Immigration and Customs Enforcement," dated March 26, 2004, or as updated.
- 7.11. ICE Directive 3002.1, "ICE Badge and Credential Program," including Attachment A, "Procedures for Reporting Lost/Stolen Law Enforcement Badges, DHS Seal Badges, and Credentials," and other Attachments, dated January 12, 2010, or as updated.
- 7.12. ICE Directive 1012.1 (former number 1-3.0), "ICE Screening Criteria for Federal, State, or Local Law Enforcement, Correctional, and Mission Support Personnel Supporting ICE Programs," dated October 18, 2007, or as updated.
- 7.13. Interim ICE Use of Force Policy, dated July 7, 2004, or as updated or superseded.

8. Attachments. N/A.

9. **No Private Right:** This document provides only internal ICE 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 ICE.

 7/30/18
Derek N. Benner
Deputy Executive Associate Director and
Senior Official Performing the Duties of the
Executive Associate Director
Homeland Security Investigations