

**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Superseded: U.S. Immigration and Customs Enforcement (ICE) Office of Investigations (OI) Directive 05-007, "Foreign Personnel Designated to Act as Customs Officers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.

- x) 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

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