

## U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

### ICE Directive 1061.2: Recordings by ICE Personnel

**Issue Date:** January 24, 2023  
**Effective Date:** January 24, 2023  
**Superseded:** ICE Directive No. 1061.1, Recordings by ICE Personnel (August 29, 2022)

- 1. Purpose/Background.** This Directive sets forth U.S. Immigration and Customs Enforcement (ICE) policy regarding recordings made by ICE personnel while performing official duties irrespective of location—to include while teleworking, working remotely, or at an alternative worksite—or regarding official matters while off-duty, irrespective of location. ICE is responsible for protecting national security and enforcing criminal and civil laws, and highly sensitive law enforcement and national security matters are handled by ICE employees and within ICE workplaces. Moreover, ICE complies with federal law respecting the creation, maintenance, and preservation of records and recorded information, regardless of form or characteristics. Additionally, personnel matters and other confidential and sensitive matters involving Personally Identifiable Information (PII) are addressed in ICE workplaces and by ICE employees who are teleworking or working remotely.

ICE has a responsibility to ensure the integrity and security of our workplaces and our official information. Unauthorized recordings by ICE personnel have the potential to violate individuals' privacy rights, place victims in danger and to compromise national security and law enforcement functions.

This Directive is intended to address any potential ambiguity about the meaning of “unauthorized recordings” contained in the existing disciplinary policy stated in Section F.3 of the ICE Table of Offenses and Penalties. To do this, the Directive identifies circumstances in which recording is authorized and provides procedures for obtaining authorization to record in instances that are not listed in this Directive. This Directive provides a means to avoid unintentional violation of policy, its purpose is to clarify and reiterate existing policy, and it is not intended as a change in conditions of employment.

- 2. Policy.**<sup>1</sup> It is ICE Policy that ICE personnel will not create or facilitate the creation of unauthorized recordings while conducting official duties (to include while teleworking,

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<sup>1</sup> In accordance with 5 U.S.C. § 2302(b)(13), this Directive is consistent with and does not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by statute or Executive Order relating to: (1) classified information; (2) communications to Congress; (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or (4) any other whistleblower protection.

working remotely, or at an alternative worksite); or regarding any official matters while off-duty, regardless of location. While the law in some states may permit any one party to a conversation to consent to the recording of all parties, this Directive prohibits unauthorized recordings of official business by ICE personnel, regardless of jurisdiction. ICE personnel are also prohibited from arranging for, requesting, or directing others to record where this Directive would prohibit the recording by the ICE personnel themselves.<sup>2</sup>

**2.1. Authorized Recordings.** The above prohibition does not apply to the following authorized recordings:

- 1) Physical security recordings at ICE facilities;
- 2) Those made under the conditions and procedures authorized by other ICE Directives, including, but not limited to, the ICE Directive 19010.1, Interim Policy Authorizing the Body Worn Camera (BWC) Pilot (October 6, 2021), or any successor policy, which authorizes and requires in certain instances officer BWC recordings of interactions between community members and specified ICE law enforcement officers, and ICE Directive 10087.1, Electronic Recordings of Custodial Statements in Federal Criminal Investigations (July 15, 2016);
- 3) Those authorized by an Office of Professional Responsibility (OPR) management official as part of OPR investigations or polygraph examinations;
- 4) Those made by authorized management officials, or their staff, during an official reply to a proposed disciplinary action or proposed adverse action;
- 5) Those made by or facilitated by the Office of the Principal Legal Advisor or Labor and Employee Relations in the course of legal or administrative proceedings;
- 6) Those authorized by the Office of Public Affairs (OPA), Office of Partnership and Engagement (OPE) (e.g., public engagements), or the Office of Congressional Relations (OCR), where appropriate;
- 7) Those made in accordance with ICE Directive 5001.1,<sup>3</sup> Access to Produce Public Affairs Productions (Mar. 6, 2007), or any successor policy;
- 8) Those made for authorized investigations, including undercover investigations and wiretaps (authorities include, but are not limited to 18 U.S.C. sections 2510-2522, the HSI Technical Operations Handbook (HSI HB 14-04), or other applicable federal or state laws and regulations);

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<sup>2</sup> ICE personnel may participate in meetings hosted by external entities where the external entity records the meeting without prior notice.

<sup>3</sup> The Directive itself is numbered 22000.1 under an older numbering protocol.

- 9) Those made for authorized Equal Employment Opportunity investigations conducted pursuant to 29 C.F.R. Part 1614 and Equal Employment Opportunity Commission Management Directive 110 (revised Aug. 5, 2015);
- 10) Those made under the conditions established by an employee's approved Reasonable Accommodation;<sup>4</sup>
- 11) Those made for management-approved training or communication for later dissemination to a wider audience, such as Town Hall Meetings;
- 12) Those recordings which are necessary for the performance of work duties *and*:
  - a. Already expressly authorized by the appropriate Field Responsible Official (FRO) or Headquarters Responsible Official (HRO); or
  - b. So clearly accepted, routine, and well-known regarding official agency matters as to effectively establish the existence of such authorization;<sup>5</sup> or
- 13) Where otherwise authorized by ICE in Section 5.1 of this Directive.

**2.2. Enforceability.** This is a federal work-related policy intended to promote efficiency, safeguard privacy rights, ensure internal security, and protect national security. Failure to comply with the provisions of this Directive may result in disciplinary action up to and including removal from employment.

**3. Definitions.** The following definitions apply for purposes of this Directive only:

- 3.1. Recording.** The electronic capturing or collecting of audio and/or visual information, data, or images through any means that permits listening, viewing, or reviewing by anyone either contemporaneously or at a later time.
- 3.2. Field Responsible Official (FRO).** The highest-ranking official in any ICE field location, including Special Agents in Charge, Field Office Directors, ICE Attachés, Chief Counsel, and any other officials who have been designated in writing by the ICE Director.
- 3.3. Headquarters Responsible Officials (HROs).** Executive Associate Directors (EADs) of Enforcement and Removal Operations (ERO), Homeland Security Investigations (HSI), and Management and Administration (M&A); the Principal Legal Advisor; the Associate Director of the Office of Professional Responsibility; and the Assistant Directors,

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<sup>4</sup> When a recording is made by an individual using a recording device as part of a currently approved reasonable accommodation, the recording shall be for the exclusive use for the benefit of the identified individual with a disability. If a conversation is to be recorded under this provision, all parties to the conversation must be notified in advance of the start of the recording. Conversations recorded or relayed as part of a reasonable accommodation shall be held in confidence and not shared unless the management official who authorized the reasonable accommodation approves disclosure in order to effectuate the reasonable accommodation.

<sup>5</sup> Questions from ICE personnel regarding whether a recording falls under the clearly accepted/routine exception should be directed to the appropriate FRO or HRO, through supervisory channels.

Officers, or equivalent positions who report directly to the Director, Deputy Director, or Chief of Staff.

**3.4. ICE Personnel.** All ICE employees and contractors, regardless of duty station or locality.

**4. Responsibilities.**

**4.1. HROs** are responsible for:

- 1) Ensuring compliance with the provisions of this Directive within their Directorate or Program Office;
- 2) Developing and issuing any necessary implementation guidance specific to their Directorate or Program Office, in coordination with the ICE Office of Regulatory Affairs and Policy (ORAP);
- 3) Reporting any suspected violations of this Directive to the OPR; and
- 4) Ensuring there is a process in place to receive requests for authorization to record, as described in Section 5.1, and adjudicating those requests in accordance with the requirements set forth in this Directive.

**4.2. FROs** are responsible for:

- 1) Ensuring compliance with the provisions of this Directive within their respective area of responsibility;
- 2) Reporting any suspected violations of this Directive to OPR; and
- 3) Ensuring there is a process in place to receive requests for authorization to record, as described in Section 5.1, and adjudicating those requests in accordance with the requirements set forth in this Directive.

**4.3. Office of Leadership and Career Development** is responsible for developing training for ICE personnel on the ICE Training System and any successor training platform to ensure compliance with this Directive, as well as for ensuring that ICE personnel complete the training when they are onboard and annually thereafter.

**4.4. Supervisors** are responsible for ensuring compliance with the provisions and requirements of this Directive, taking corrective actions as necessary, and reporting suspected violations to OPR.

**4.5. ICE Personnel** are responsible for:

- 1) Timely completing any assigned training on this Directive;

- 2) Complying with the provisions and requirements of this Directive; and
- 3) Reporting any suspected violations of this Directive to their supervisor and/or OPR.

## **5. Procedures/Requirements.**

**5.1. Prior Authorization Required.** Prior Authorization in writing by the appropriate HRO or FRO must be obtained by ICE personnel before making any recording not expressly permitted in Section 2.1 of this Directive while conducting any official duties.<sup>6</sup> With the exception of the ICE Director and Deputy Director, ICE personnel covered by this policy may not approve their own request for authorization to record. HROs or FROs have authority to promulgate local recording policies, to include standing approval for recordings, which are within their purview (e.g., social functions in a break room). Local policy must be consistent with the needs of the Agency and this directive.

**5.2. Contents of Requests.** Any request by ICE personnel for authorization to record must be made in writing and specifically articulate:

- 1) The reason for the authorization request and purpose of the recording sought;
- 2) The parameters of the request for authorization, including the method through which recording will be carried out (e.g., photograph, audio recording, video recording);
- 3) How the requestor intends to minimize the risk of recording any ambient communications, conversations not intended to be recorded, sensitive information (e.g., non-public information, PII), or individuals who are unaware the conversation is being recorded or images are being captured;
- 4) The anticipated date, time, and location of the requested recording; and
- 5) An expiration date for the authorization, if approved.

**5.3. Approving Requests.** Prior to approving a request for authorization by ICE personnel, an HRO or FRO should consider the following factors:


- 1) The specific reason or need for the anticipated recording;
- 2) Whether the request for authorization is tailored to the reason for the anticipated recording;
- 3) If and how the anticipated recording will be conducted to minimize the recording of ambient communications, conversations not intended to be recorded, the capturing of sensitive information (e.g., non-public information, PII), or individuals who are unaware the conversation is being recorded or images are being captured;

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<sup>6</sup> This requirement applies regardless of location (e.g., teleworking, alternative worksites, remote work), and, regarding any official matters, while off-duty.

- 4) Whether any less intrusive means exist to achieve the purpose of the anticipated recording;
  - 5) Whether notifying individuals subject to the anticipated recording is possible, appropriate, or legally required;
  - 6) If privacy rights of individuals may be impacted by the anticipated recording;
  - 7) Whether there is a chance that privileged communications or non-public information may be recorded if the request for authorization is approved;
  - 8) Whether approving the request and authorizing the anticipated recording is in the interest of the Agency; and
  - 9) Any other case-specific facts and circumstances that may be relevant to a particular request for authorization.
6. **Recordkeeping.** All relevant documents produced or provided in accordance with this Directive, including requests, authorizations/denials, and any authorized recordings, must be maintained in accordance with a General Records Schedule or a National Archives and Records Administration-approved agency-specific records control schedule. If the records are not subject to a records schedule, they must be maintained indefinitely by the agency. In the event the records are subject to a litigation hold, they may not be disposed of under a records schedule until further notification.
7. **Authorities/References.**
- 7.1. The Privacy Act of 1974, 5 U.S.C. § 552a.
  - 7.2. 6 U.S.C. § 341.
  - 7.3. Federal Information Security Modernization Act, 44 U.S.C. § 3554.
  - 7.4. Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. § 2635 (2022)
  - 7.5. 29 C.F.R Part 1614 (2022).
  - 7.6. U.S. Equal Emp. Opportunity Comm'n, Management Directive for 29 C.F.R Part 1614 (EEO-MD-110) (2015)
  - 7.7. DHS Delegation No. 00002, Delegation to the Under Secretary for Management as the Department's Chief Sustainability Officer (May 28, 2015).
  - 7.8. DHS Delegation No. 00500, Delegation to the Chief Readiness Support Officer (Aug. 28, 2020).

- 7.9. DHS Management Directive 11042.1, Safeguarding Sensitive But Unclassified (For Official Use Only) Information (Jan. 6, 2005).
- 7.10. DHS Privacy Policy Guidance Memorandum 2017-01, DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Personally Identifiable Information (Apr. 2017).
- 7.11. DHS Sensitive Systems Policy Directive No. 4300A (July 27, 2017).
- 7.12. DHS 4300A Sensitive Systems Handbook (Nov. 15, 2015).
- 7.13. ICE Directive No. 1022.1, Table of Offenses and Penalties (Dec. 8, 2006).
- 7.14. ICE Directive No. 1033.1, Employee Code of Conduct (Aug. 7, 2012).
- 7.15. ICE Directive No. 5000.1, Access to Produce Public Affairs Productions (Mar. 6, 2007).
- 7.16. ICE Directive No. 10087.1, Electronic Recording of Custodial Statements in Federal Criminal Investigations (July 15, 2016), or as updated.
- 7.17. ICE Directive No. 19010.1, Interim Policy Authorizing the BWC Pilot (Oct. 6, 2021), or as updated.
- 7.18. HSI Handbook No. 14-04, Technical Operations Handbook (2014), or as updated.
- 8. **Attachments.** None.
- 9. **No Private Right Statement.** This Directive 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.

  
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**Tae D. Johnson**  
**Acting Director**  
**U.S. Immigration and Customs Enforcement**

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January 24, 2023  
**DATE**