

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
Access to Produce Public Affairs Productions

OFFICE OF PRIMARY INTEREST: OFFICE OF PUBLIC AFFAIRS

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| DISTRIBUTION: | ICE |
| DIRECTIVE NO.: | 22000.1 |
| ISSUE DATE: | March 6, 2007 |
| EFFECTIVE DATE: | March 6, 2007 |
| REVIEW DATE: | March 6, 2010 |
| SUPERSEDES: | See Section 3 below. |

DIRECTIVE TITLE: Access to Produce Public Affairs Productions

- 1. PURPOSE and SCOPE.**
 - 1.1. This Directive establishes U.S. Immigration and Customs Enforcement (ICE) policy regarding access by ICE Office of Public Affairs (OPA) or designees to produce video (B-roll), photographs, audio, or similar images thereof of ICE's missions and operations. This Directive establishes procedures that OPA and ICE's Program Offices must adhere to in order to develop adequate materials.
 - 1.2. This Directive applies to all ICE Program Offices. Special circumstances, including access by non-ICE media entities, should be directed to the Director of OPA and the Assistant Secretary for ICE.
- 2. AUTHORITIES/REFERENCES.**
 - 2.1. Public Law 107-296, Homeland Security Act of 2002, (November 25, 2002).
 - 2.2. 5 U.S.C. § 552, Freedom of Information Act, as amended
 - 2.3. 5 U.S.C. § 552a, Privacy Act of 1974.
 - 2.4. 5 U.S.C. § 2302, Whistleblower Act.
 - 2.5. 5 CFR § 2635, Standards of Ethical Conduct for Employees of the Executive Branch.
 - 2.6. 28 CFR § 50.2, Release of Information Relating to Criminal and Civil Proceedings.
 - 2.7. DHS Management Directive 2220, Embarkation of Media on Aircraft, Vessels, and Vehicles.
 - 2.8. DHS Management Directive 2230, Public Affairs Management Structure.

- 2.9. DHS Management Directive 2231, Participation of the Department of Homeland Security with Film and Television Productions.
- 2.10. DHS Management Directive 2250, Press Releases.
- 2.11. DHS Management Directive 2260, Review of External Publications.
- 2.12. DHS Management Directive 2270, Public Speaking Opportunities.
- 2.13. DHS Management Directive 2290, Coordination with U.S. Attorneys' Offices for Release of Information.
- 2.14. DHS Management Directive 11042, Safeguarding Sensitive but Unclassified (For Official Use Only) Information.
- 2.15. International Law: Article 36 of the Vienna Convention on Consular Relations (VCCR).
3. **SUPERSEDED/CANCELLED POLICY/SUMMARY OF CHANGES.** This Directive supersedes legacy agency policies, directives, and practices regarding access to produce video (B-roll), photographs, audio or similar images thereof of ICE's missions and operations. It is the originating and establishing Directive for ICE access to produce public affairs productions.
4. **BACKGROUND.** This Directive establishes ICE policy and procedures under which members or designees of ICE OPA may be granted access to ICE law enforcement operations for purposes of recording such operations through audio / video media. There are circumstances and periods of national interest when it may be appropriate for OPA to provide *maximum* public disclosure and media contact about ICE operational matters, as appropriate. These include cases such as where: 1) the heinous or extraordinary nature of the crime requires public reassurance that the matter is being promptly and properly handled by the appropriate authority; 2) the community needs to be told of an imminent threat to public safety; 3) a request for public assistance or information is vital; or 4) there is an incident of national significance or a major incident.
5. **DEFINITIONS.**
 - 5.1. **B-roll production** – Video and audio captured during an event to visually depict the events in a television news production.
 - 5.2. **Embedding or 'ride-alongs'** – In instances where granting access to members of the media may not be permissible, the deployment of trained OPA communication specialists onboard aircraft, vessels, and vehicles to gain photographic, video, audio or related images of ICE missions and operations with the intent to release them to the public at a later time.

- 5.2. For Official Use Only (FOUO):** Term used within the Department of Homeland Security (DHS) to identify information that is FOUO, which is unclassified information of a sensitive nature, not otherwise categorized by statute or regulation, the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of federal programs, or other programs or operations essential to the national interest. Information impacting the national security of the United States and classified Confidential, Secret, or Top Secret under Executive Order 12958, "Classified National Security Information," as amended, or its predecessor or successor orders, is not to be considered FOUO. FOUO information is not to be considered classified information.
- 5.3. Headquarters' Principal Staff:** Members of the most senior management group within ICE, including the Assistant Secretary; Deputy Assistant Secretary for Operations; Deputy Assistant Secretary for Management, Chief of Staff; Counsel to the Assistant Secretary; Principal Legal Advisor; and the following Directors: Executive Secretariat; Federal Protective Service; Office of the Chief Financial Officer; Office of the Chief Information Officer; National Firearms and Tactical Training Unit; National Incident and Response Unit; Office of Congressional Relations; Office of Detention and Removal Operations; Office of Equal Employment Opportunity; Office of Human Capital; Office of Intelligence; Office of Investigations; Office of Policy; Office of Professional Responsibility; Office of Public Affairs; Office of Training and Development; and Reporting Coordination Center; and Office of International Affairs.
- 5.4. Law Enforcement Sensitive (LES):** Term used within ICE to identify LES information. LES information is a type of FOUO information that is compiled for law enforcement purposes, the unauthorized disclosure of which could adversely impact the conduct of law enforcement programs or the privacy or welfare of involved persons. Information impacting the national security of the United States and classified Confidential, Secret, or Top Secret under Executive Order 12958, "Classified National Security Information," as amended, or its predecessor or successor orders, is not to be considered FOUO/LES. If LES information is classified, it is no longer subject to the provisions of this Directive.
- 5.5. Principal Field Officers (PFOs)** of the ICE Operational Program Offices are the Office of Investigations (OI) and Office of Professional Responsibility (OPR); Special Agents in Charge; Federal Protective Service (FPS) Regional Directors; Detention and Removal Operations (DRO) Field Office Directors; Field Intelligence Unit Directors; and other officials as designated in writing by the Assistant Secretary for ICE.
- 5.6. Public Affairs Communication Specialist:** ICE employee or any other Government employee, including federal law enforcement officers, or other

individuals designated in writing by the appropriate Headquarters (HQ) Principal, and assigned to function as an agent of the ICE Office of Public Affairs with the responsibility of collecting and recording audio, video, images, and photographs in the interest of documenting law enforcement activities to further public knowledge of ICE's missions.

6. POLICY.

- 6.1. HQ Principal Staff shall designate, in writing, which of its employees are authorized to participate in the development of public affairs video productions.
- 6.2. All written designations shall be submitted through the appropriate senior ICE officials and provided to OPA.
- 6.3. All photographic, video, audio, or related image opportunities shall be approved in accordance with the procedures prescribed in section 8 below.
 - 1) National Security: Law enforcement sensitive information must be protected. Consideration must be afforded to this material where its release could jeopardize national security and/or interfere with a judicial proceeding or law enforcement official or activity. Plans shall be developed in advance to assure that protection is fully provided, and audio operations security measures shall be used.
 - 2) National or Foreign Policy Matters: The impact of the request on national or foreign policy issues shall be considered. Any special restrictions, such as, but not limited to, prohibitions on access to and visual documentation of illegal migrants, foreign detainees, or those seeking asylum or temporary refuge, shall be followed.
 - 3) Law Enforcement: Materials recorded by OPA communications specialists via any device at an operational area shall not be released to the public if ongoing law enforcement operations or the prosecution of forthcoming legal action will be jeopardized. Recordings shall be made only from a safe and secure location. Identities of the suspect and law enforcement officials shall be protected.
 - 4) Safety: OPA communication specialists should exercise caution and prudent judgment when participating in law enforcement activities. OPA communication specialists shall remain at a safe and secure distance from the target area or "hot" zone until it is cleared by the officer in charge at the scene. They shall properly identify themselves and their purpose and status to law enforcement personnel at the scene.

- 5) **Equipment:** In addition to their professional equipment and attire, which properly reflects the position of an OPA employee, all OPA communication specialists deployed to an area of operation shall be equipped with a protective vest provided by National Firearms and Tactical Training Unit.
 - 6) **Training:** OPA communication specialists shall receive, when appropriate, basic raid education training to avoid any obstruction.
 - 7) **Privacy:** Communication specialists shall ensure they adhere to the requirements of the Privacy Act and any other applicable federal statutes, and avoid engaging in any external communications that would constitute clearly unwarranted invasions of personal privacy.
- 6.4. The Principal Field Officers or Principal HQ Office shall coordinate with the appropriate United States (U.S.) Attorney regarding proposed or actual media-related productions involving post-complaint or pre-indictment arrests and seizures before their release.

7. RESPONSIBILITIES.

- 7.1. **Director for ICE Office of Public Affairs** – Oversees the production and issuance of B-roll, photographs, audio or other images depicting ICE’s operations. Ensures OPA communications specialists perform appropriate functions and do not interfere with law enforcement operations.
- 7.2. **OPA Communications Specialists** are responsible for documenting and recording B-roll, photographs, audio or other images depicting ICE’s operations. In addition, the OPA communications specialist will follow plans agreed upon in advance to ensure that protection is fully provided and audio operations security measures are followed.
- 7.3. **ICE Headquarters Principals** – Ensure, as necessary, the written designation of their respective employees as officials authorized to assist OPA in documenting certain functions.

8. PROCEDURES.

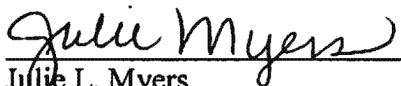
- 8.1. **Approval:** Access to record non-criminal local operations is obtained by OPA at the local Principal Field Officer level. The local OPA shall advise HQ OPA. The notification to HQ OPA shall include details on operation, timing, and relevant details. Any additional concerns, such as security or potential impact on DHS and ICE policies, should be briefed prior to approval.

- 1) Local OPA obtains approval from HQ OPA and HQ Program Offices for the recording of all criminal and any non-criminal operations that may have national implications. In these circumstances, ICE OPA will consult with and obtain approval from the U.S. Attorney and operational component handling the matter prior to recording the operation.
 - 2) Employees who obtain what may be evidence in any criminal or civil case or who make or obtain any photographic, audio, or similar image thereof, in connection with a search or arrest warrant, shall not disclose such material to the news media without the prior specific approval of the lead operational element and the U.S. Attorney who shall consider applicable regulations and policy, or upon a court order directing such production.
- 8.2. **Prior to Deployment:** Prior to deployment, the OPA communication specialist receives all the necessary approvals and attends all the necessary briefings.
- 8.3. **During Deployment:** While deployed with a Program Office, the OPA communication specialist shall comply with previously agreed upon rules. A strong effort should be made by OPA to avoid recording audio and the faces of suspects and agents at the scene of the operation; however, flexibility in the matter of recording faces is afforded to OPA as there might be incidental recording. Images of agents may be recorded, but only after obtaining their consent. National security guidelines shall be complied with at all times, especially in the event that OPA captures an incident that puts operations in jeopardy. Any objections or concerns with recordings will be subject to appropriate edits prior to releasing final product.
- 8.4. **After Deployment:** Following the operation, if asked, host operational elements and HQ Program Offices shall stay in contact with the respective U.S. Attorney's Office to coordinate review of recorded materials prior to release to the media and public. Any problems or concerns that arose during the deployment should be communicated to the OPA Director.
- 8.5 **Foreign Contact:** In the event that a deployment is expected to enter foreign airspace, waters, or soil, the respective OPA communications specialist, through its HQ Program Office, in coordination with the host Program Office, shall ensure that country clearance is obtained in advance and conduct any advance liaison with the respective American Embassy public affairs office. In addition, all ICE employees must coordinate their foreign activities and contact with foreign officials with the ICE Office of International Affairs and appropriate ICE Attaché(s) or Senior ICE Representatives. This coordination must begin during initial planning and continue through deployment and follow-up.

- 1) All U.S. Government employees traveling on official orders to a foreign nation must possess an "Official U.S. Passport."
- 2) While in a foreign country as a guest on a DHS aircraft vehicle or vessel, the deployed OPA employee shall comply with U.S. and foreign restrictions or laws.

9. **ATTACHMENT.** None.

10. **NO PRIVATE RIGHT STATEMENT.** This Directive is an internal policy statement of ICE. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.

Approved 
Julie L. Myers
Assistant Secretary
U.S. Immigration and Customs Enforcement