



**Privacy Advisory Commission**  
**March 27, 2017 5:00 PM**  
**Oakland City Hall**  
**City Council Chambers**  
**1 Frank H. Ogawa Plaza, 3rd Floor**  
***Special Meeting Agenda***

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**Commission Members:** *District 1 Representative: Reem Suleiman, District 2 Representative: Yaman Salahi, District 3 Representative: Brian M. Hofer, District 4 Representative: Lou Katz, District 5 Representative: Raymundo Jacquez III, District 6 Representative: Clint M. Johnson, District 7 Representative: Robert Oliver, Council At-Large Representative: Saied R. Karamooz, Mayoral Representative: Deirdre Mulligan.*

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*Each person wishing to speak on items must fill out a speaker's card. Persons addressing the Privacy Advisory Commission shall state their names and the organization they are representing, if any.*

1. 5:00pm: Call to Order, determination of quorum.
2. 5:05pm: Review and approval of March 9 meeting minutes.
3. 5:10pm: Open Forum
4. 5:20pm: Presentation and possible action on proposed "Resolution in support of SB 31 (Lara) Religious Freedom Act" (Councilmember McElhaney).
5. 5:30pm: Presentation and possible action on Surveillance Equipment Ordinance Section 8.
6. 5:50pm: Presentation and discussion on data sharing/joint operation agreements with outside entities (Oakland Police Department).
7. 7:00pm: Adjournment



**Privacy Advisory Commission**  
**March 9, 2017 5:00 PM**  
**Oakland City Hall**  
**Hearing Room 1**  
**1 Frank H. Ogawa Plaza, 3rd Floor**  
***Special Meeting Minutes***

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**Commission Members:** *District 1 Representative: Reem Suleiman, District 2 Representative: Yaman Salahi, District 3 Representative: Brian M. Hofer, District 4 Representative: Lou Katz, District 5 Representative: Raymundo Jacquez III, District 6 Representative: Clint M. Johnson, District 7 Representative: Robert Oliver, Council At-Large Representative: Saied R. Karamooz, Mayoral Representative: Deirdre Mulligan.*

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*Each person wishing to speak on items must fill out a speaker's card. Persons addressing the Privacy Advisory Commission shall state their names and the organization they are representing, if any.*

1. 5:00pm: Call to Order, determination of quorum.

*All attendees present.*

2. 5:05pm: Review and approval of February 2 meeting minutes.

*The minutes were approved unanimously.*

3. 5:10pm: Presentation and possible action on proposed "Civil Rights Ordinance" (Councilmember McElhaney) – guest speakers Christina Sinha (AAAJ-ALC), John Crew (Police Practices Expert), Brittney Rezaei (CAIR-SFBA), Pastor Michael McBride (PICO), Matt Cagle (ACLU).

*First presenter was Christina Sinha from ACLU, stated JTTF OPD officers may not know that they still have to follow state and local law. They want to make sure that officers know they have to follow state and local law.*

*Second presenter was Brittney Rezaei talking about FBI interviewing people based on religion. Concerned that OPD may be cooperating with FBI on this and chilling effect would be created. Concerned about OPD violating our own rules. OPD will not be used to surveil community members in assisting FBI.*

*Third presenter was John Crew (former ACLU). OPD represents Oakland values. Trump administration targets Muslims and undocumented immigrants. SF law did not require SFPD to leave JTTF MOU. Two areas where it plays out:*

1. *JTTF targeting people who are practicing First Amendment rights. DGO M-17 makes reasonable suspicion standard. FBI racial profiling has huge national security exception. DGO M-19 is very clear that we do not want this.*
2. *ICE is a member of JTTF. Info ends up in federal database that is accessible by ICE. This is concerning re: Muslim registry. Base operation plan includes US person status check. OPD may not even know this is going on.*

*Fourth presenter was Matt Cagle from ACLU. He expressed concern with Federal policies.*

*Fifth presenter was Kevin McBride from PICO. He believes that he is being surveilled. He wants these protections in place. Concern that OPD not be involved in misplaced federal policies. Make sure that JTTF follows the values that ordinance suggests.*

*Public speakers:*

*Assata Olugbala discussed racial profiling. OPD has been skirting racial profiling. African Americans have been trying to correct racial profiling for 14 years. No high standards for African Americans in Oakland. The City has been surveilling African Americans for years. What OPD does affects African Americans; Look at stop data. Never heard experts come out to discuss African American racial profiling.*

*Basrai Sabiha is local business owner and OPD needs to reject JTTF. Will we be protected from Trump's FBI. OPD needs to abide by strong local laws.*

*Barnali Ghosh noted she is hyperaware of surveillance and targeting following 9/11. Profiling, harassment, and targeting are very common. JTTF does not make her feel safer and OPD needs to comply with local laws.*

*Joyce Xi works at Advancing Asian Law Caucus and wants to emphasize that local resources and funding not go toward Trump's JTTF. FBI has been involved in surveillance throughout history.*

*Sahar Driver was part of group of that helped FBI pass ordinance in SF. Greater oversight in SF. Commissioner Questions*

*Raymundo Jacquez: Report language seems vague. (Brian would be happy to take suggestions for ordinance to CM Gibson McElheney.) Brian believes that review of existing agreements should be performed by the Privacy Commission.*

*Brian Hofer Made two amendments and moved to City Council.*

*He is very encouraged by local mayors speaking out about being sanctuary cities. May discuss Muslim Registry on April 6 – Gibson McElheney is supportive.*

4. 6:00pm: Presentation and possible action on Surveillance Equipment Ordinance Sections 8, 9, 10 (City Attorney's office)

*Brian Hofer reviewed the surveillance equipment ordinance that the Privacy Commission originally approved.*

*Matt Cagle: It is really important that this ordinance move forward with commission and it depends on strong enforcement mechanisms. It is important that the commission work with city attorney and city staff.*

*Brian Hofer recommended rejecting the proposed amendments to Section 9.*

*Reem Suleiman: agreed with leaving as it was. The change was from an abundance of caution.*

*Raymundo Jacquez: moved to reject changes to Section 9. Seconded by Brian Hofer and passed by the Commission.*

*Brian moved to adopt changes to Section 10 and seconded by Deirdre Mulligan and passed by the Commission.*

*Section 8: Brian said that Santa Clara County got Subsection 4) through but only after an enormous delay. What is utility if overall goal is structural reform. Brian's proposal is leaving Section 8 alone and sending out notice now with two week response deadline. Tentatively targeting April 11 PSC meeting. Will need Special Privacy Commission to discuss it in the meantime.*

*Deirdre Mulligan: Brian's process makes sense.*

*Robert: Any policy without enforcement mechanism is very confusing.*

*Brian: Injunctive relief makes sense. Send the unions notice, ask them to respond within two weeks and return on March 23. Brian moved and Robert seconded. The motion passed.*

5. 6:30pm: Presentation and discussion on data sharing/joint operation agreements (Oakland Police Department). No action will be taken on these items at this meeting.

*Tim Birch discussed ICE agreement*

*Rashidah Grinnage asked if OPD is receiving money from the Feds that impact how OPD does business? City has history of slow walking requests. She worked on Measure LL campaign; she hopes that Police Commission will work with Privacy Commission in helping to navigate through tricky issues. CPAB should have voice in reporting to Police Commission. Police Commission will have subpoena power. Ordinance may be coming to PSC on April 11. On issue of sanctuary city, need to make sure that the resolution/ordinances are consistent with signed agreements.*

*Ken Chambers: Thanks to Mr. Hofer for taking stand on cameras. It would be nice to know about profiling of Muslims, immigrants, and African Americans. He just wants due process.*

*Assata Ologbata: It is extremely difficult to constantly come to meetings with an overwhelming support for sanctuary cities and immigrants. African Americans thought that living the Bay Area would make their lives better.*

*Ken Pratt: He appreciated presentation on Item 3. There is work to do. He doesn't understand why Gibson McElheney is taking this up. She has ethical issues.*

6. 6:40pm: Open Forum

*No additional Speakers.*

7. 6:45pm: Adjournment

*Meeting adjourned at 6:46 pm.*

AMENDED IN SENATE FEBRUARY 27, 2017

AMENDED IN SENATE JANUARY 24, 2017

**SENATE BILL**

**No. 31**

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**Introduced by Senator Lara**

*(Coauthors: Senators Anderson, Hertzberg, Monning, and Wiener)*

*(Coauthors: Assembly Members Bonta, Chiu, and Cristina Garcia)*

December 5, 2016

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An act to add Section 8310.3 to the Government Code, relating to state ~~government~~, *government, and declaring the urgency thereof to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 31, as amended, Lara. California Religious Freedom Act: state agencies: disclosure of religious affiliation information.

Existing law prohibits a state agency from including a question regarding an ~~applicant's~~ *applicant's* race, sex, marital status, or religion in any application form for employment.

This bill would prohibit a state or local agency or a public employee acting under color of law from providing or disclosing to the federal government ~~personally identifiable~~ *personal* information regarding a person's religious beliefs, practices, or affiliation, as specified, when the information is sought for compiling a database of individuals based on religious belief, practice or affiliation, national origin, or ethnicity for law enforcement or immigration purposes. The bill would also prohibit a state agency from using agency resources to assist with any government program compiling such a database, or from making state databases available in connection with an investigation or enforcement under such a program. The bill would prohibit state and local law enforcement agencies *and their employees* from collecting ~~personally~~

~~identifiable~~ *personal* information on the religious beliefs, practices, or affiliation of any individual, except as part of a targeted investigation, or where necessary to provide religious accommodations. The bill would also prohibit law enforcement agencies from using agency or department moneys, facilities, property, equipment, or personnel to investigate, enforce, or assist in the investigation or enforcement of any criminal, civil, or administrative violation, or warrant for a violation, of any requirement that individuals register with the federal government or any federal agency based on religion, national origin, or ethnicity. The bill would also terminate, to the extent of any conflict, any existing agreements that make any agency or department information or database available in conflict with these provisions.

*This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) In California, we celebrate the rich cultural heritage and
- 4 diversity of our residents.
- 5 (b) Freedom of religion and protection from persecution on the
- 6 basis of religion are founding ideals of our nation.
- 7 (c) California must uphold the protection of religious freedom
- 8 enshrined in the United States Constitution for all of its people,
- 9 and the state has a moral obligation to protect its citizens from
- 10 religious persecution.
- 11 (d) Section 4 of Article I of the California Constitution
- 12 guarantees the free exercise and enjoyment of religion without
- 13 discrimination or preference.
- 14 SEC. 2. Section 8310.3 is added to the Government Code, to
- 15 read:
- 16 8310.3. (a) This section shall be known, and may be cited, as
- 17 the California Religious Freedom Act.
- 18 (b) Notwithstanding any other law, a state or local agency or
- 19 public employee acting under color of law shall not:
- 20 (1) Provide or disclose to federal government authorities
- 21 ~~personally identifiable~~ *personal* information regarding the religious

1 beliefs, practices, or affiliation of any individual for the purpose  
2 of compiling a list, registry, or database of individuals based on  
3 religious affiliation, national origin, or ethnicity.

4 (2) Use agency money, facilities, property, equipment, or  
5 personnel to assist in creation, implementation, or enforcement of  
6 any government program compiling a list, registry, or database of  
7 ~~personally identifiable~~ *personal* information about individuals  
8 based on religious belief, practice, or affiliation, or national origin  
9 or ethnicity, for law enforcement or immigration purposes.

10 (3) Make ~~personally identifiable~~ *personal* information from  
11 agency databases available, including any databases maintained  
12 by private vendors contracting with the agency, to anyone or any  
13 entity for the purpose of investigation or enforcement under any  
14 government program compiling a list, registry, or database of  
15 individuals based on religious belief, practice, or affiliation, or  
16 national origin or ethnicity for law enforcement or immigration  
17 purposes.

18 (c) Notwithstanding any other law, state and local law  
19 enforcement agencies *and their employees* shall not:

20 (1) Collect information on the religious belief, practice, or  
21 affiliation of any individual except (A) as part of a targeted  
22 investigation of an individual based on reasonable suspicion to  
23 believe that individual has engaged in criminal activity, and when  
24 there is a clear nexus between the criminal activity and the specific  
25 information collected about religious belief, practice, or affiliation,  
26 or (B) where necessary to provide religious accommodations.

27 (2) Use agency money, facilities, property, equipment, or  
28 personnel to investigate, enforce, or assist in the investigation or  
29 enforcement of any criminal, civil, or administrative violation, or  
30 warrant for a violation, of any requirement that individuals register  
31 with the federal government or any federal agency based on  
32 ~~religion~~, *religious belief, practice, or affiliation*, national origin,  
33 or ethnicity.

34 (d) Any agreements in existence on the operative date of this  
35 section that make any agency or department information or  
36 database available in conflict with the terms of this chapter are  
37 terminated on that date to the extent of the conflict.

38 (e) Nothing in this section prohibits any state or local agency  
39 from sending to, or receiving from, any local, state, or federal  
40 agency, information regarding an individual's citizenship or



1 immigration status. “Information regarding an individual’s  
2 citizenship or immigration status, lawful or unlawful” for purposes  
3 of this section, shall be interpreted consistent with Sections 1373  
4 and 1644 of Title 8 of the United States Code.

5 (f) Nothing in this section is intended to prevent any state or  
6 local agency from compiling aggregate ~~nonpersonally identifiable~~  
7 *nonpersonal* information about religious belief, practice, or  
8 affiliation, national origin or ethnicity or from exchanging it with  
9 other local, state, or federal agencies.

10 *SEC. 3. This act is an urgency statute necessary for the*  
11 *immediate preservation of the public peace, health, or safety within*  
12 *the meaning of Article IV of the California Constitution and shall*  
13 *go into immediate effect. The facts constituting the necessity are:*  
14 *In order to protect the people of California from religious or*  
15 *ethnic persecution or discrimination by law enforcement or by any*  
16 *public agency, it is necessary that this measure take immediate*  
17 *effect.*

**COST REIMBURSEMENT AGREEMENT**  
BETWEEN  
**THE FEDERAL BUREAU OF INVESTIGATION (FBI)**  
AND  
**OAKLAND POLICE DEPARTMENT (OPD)**

TASK FORCE FILE # 281D-SF-C2406106

Pursuant to Congressional appropriations, the FBI receives authority to pay overtime for police officers assigned to the formalized EAST BAY SAFE STREETS TASK FORCE (EBSSTF Task Force) as set forth below for expenses necessary for detection, investigation, and prosecution of crimes against the United States. It is hereby agreed between the FBI and OPD located at **455 7<sup>th</sup> Street, Oakland, CA 94607**, Taxpayer Identification Number: 94-600384 Phone Number: 510-238-3455 that:

1) Commencing upon execution of this agreement, the FBI will, subject to availability of the required funding, reimburse the agency for overtime payments made to the officers assigned full-time to the task force.

2) Requests for reimbursement will be made on a monthly basis and should be forwarded to the FBI field office as soon as practical after the first of the month which follows the month for which reimbursement is requested. Such requests should be forwarded by the Supervisor of the agency to the FBI Task Force Squad Supervisor and Special Agent in Charge for their review, approval, and processing for payment.

3) Overtime reimbursements will be made directly to the agency by the FBI. All overtime reimbursement payments are made by electronic fund transfer (EFT). An ACH Vendor/Miscellaneous Payment Enrollment Form must be on file with the FBI to facilitate EFT.

4) Overtime reimbursements will be calculated at the usual rate for which the individual officer's time would be compensated in the absence of this agreement. However, said reimbursement, per officer, shall not exceed monthly and/or annual limits established annually by the FBI. The limits, calculated using Federal pay tables, will be in effect for the Federal fiscal year running from October 1st of one year through September 30th of the following year, unless changed during the period. The FBI reserves the right to change the reimbursement limits, upward or downward, for subsequent periods based on fiscal priorities and appropriations limits. The FBI will notify the agency of the applicable annual limits prior to October 1st of each year.

5) The number of agency officers assigned full-time to the task force and entitled to overtime reimbursement by the FBI shall be approved by the FBI in advance of each fiscal year. Based on the needs of the task force, this number may change periodically, upward or downward, as approved in advance by the FBI.

6) Prior to submission of any overtime reimbursement requests, the agency must prepare an official document setting forth the identity of each officer assigned full-time to the task force, along with the regular and overtime hourly rates for each officer. Should any officers change during the year, a similar statement must be prepared regarding the new officers prior to submitting any

overtime reimbursement requests for the officers. The document should be sent to the field office for FBI review and approval.

7) Each request for reimbursement will include the name, rank, ID number, overtime compensation rate, number of reimbursable hours claimed, and the dates of those hours for each officer for whom reimbursement is sought. The request must be accompanied by a certification, signed by an appropriate Supervisor of the agency that the request has been personally reviewed, the information described in this paragraph is accurate, and the personnel for whom reimbursement is claimed were assigned full-time to the task force.

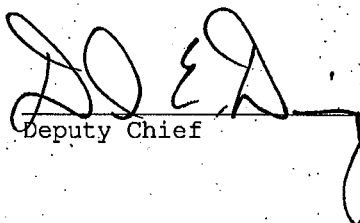
8) Each request for reimbursement will include an invoice number, invoice date, taxpayer identification number (TIN), and the correct banking information to complete the electronic fund transfer. The necessary banking information is the Depositor Account Title, Bank Account Number, Routing Number, and Type of Account (checking, savings, or lockbox). If the banking information changes, a new ACH Vendor/Miscellaneous Payment Enrollment Form must be submitted to the FBI.

9) Requests for reimbursement must be received by the FBI no later than December 31st of the next fiscal year for which the reimbursement applies. For example, reimbursements for the fiscal year ending September 30, 2016, must be received by the FBI by December 31, 2016. The FBI is not obligated to reimburse any requests received after that time.

10) This agreement is effective upon signature of the parties and will remain in effect for the duration of the agency's participation in the task force, contingent upon approval of necessary funding, and unless terminated in accordance with the provisions herein. This agreement may be modified at any time by written consent of the parties. It may be terminated at any time upon mutual consent of the parties, or unilaterally upon written notice from the terminating party to the other party at least 30 days prior to the termination date.

FOR OPD:

FOR THE FBI:

 8/29/16  
Deputy Chief Date

\_\_\_\_\_  
Special Agent in Charge Date

\_\_\_\_\_  
Contracting Officer Date  
FBI Headquarters

**COST REIMBURSEMENT AGREEMENT**  
BETWEEN  
**THE FEDERAL BUREAU OF INVESTIGATION (FBI)**  
AND  
**OAKLAND POLICE DEPARTMENT (OPD)**

TASK FORCE FILE # 192-SF-C6096665

Pursuant to Congressional appropriations, the FBI receives authority to pay overtime for police officers assigned to the formalized OAKLAND SAFE STREETS TASK FORCE (OSSTF Task Force) as set forth below for expenses necessary for detection, investigation, and prosecution of crimes against the United States. It is hereby agreed between the FBI and OPD located at 455 7<sup>th</sup> Street, Oakland, CA 94607, Taxpayer Identification Number: 94-600384 Phone Number: 510-238-3455 that:

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5) The number of agency officers assigned full-time to the task force and entitled to overtime reimbursement by the FBI shall be approved by the FBI in advance of each fiscal year. Based on the needs of the task force, this number may change periodically, upward or downward, as approved in advance by the FBI.

6) Prior to submission of any overtime reimbursement requests, the agency must prepare an official document setting forth the identity of each officer assigned full-time to the task force, along with the regular and overtime hourly rates for each officer. Should any officers change during the year, a similar statement must be prepared regarding the new officers prior to submitting any

overtime reimbursement requests for the officers. The document should be sent to the field office for FBI review and approval.

7) Each request for reimbursement will include the name, rank, ID number, overtime compensation rate, number of reimbursable hours claimed, and the dates of those hours for each officer for whom reimbursement is sought. The request must be accompanied by a certification, signed by an appropriate Supervisor of the agency that the request has been personally reviewed, the information described in this paragraph is accurate, and the personnel for whom reimbursement is claimed were assigned full-time to the task force.

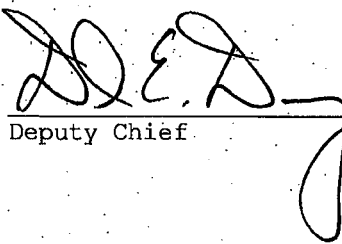
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10) This agreement is effective upon signature of the parties and will remain in effect for the duration of the agency's participation in the task force, contingent upon approval of necessary funding, and unless terminated in accordance with the provisions herein. This agreement may be modified at any time by written consent of the parties. It may be terminated at any time upon mutual consent of the parties, or unilaterally upon written notice from the terminating party to the other party at least 30 days prior to the termination date.

FOR OPD:

FOR THE FBI:

 8/29/16  
Deputy Chief Date

\_\_\_\_\_  
Special Agent in Charge Date

\_\_\_\_\_  
Contracting Officer Date  
FBI Headquarters

RESOLUTION NO. xxxxxxxxxx

SUPPORT SB 31 (LARA) RELIGIOUS FREEDOM ACT

WHEREAS, President Trump promised to establish a Muslim Registry during the campaign season; and

WHEREAS, in 2002 the National Security Exit-Entry Registration System began requiring special registration from male visitors arriving from mostly majority Muslim populations; and

WHEREAS, this program resulted in zero terrorism convictions; and

WHEREAS, SB 31 (Lara) provides robust state action in protecting our most vulnerable communities from ineffective and harmful registry programs; and

WHEREAS, SB 31(Lara) would prevent state and local government agencies from providing any personal information or databases, including those maintained by vendors, for the purposes of creating lists, registries, or databases based on a person's religion, national origin, ethnicity; and

WHEREAS, SB 31 (Lara) blocks law enforcement from enforcing violations of requirements that people register with the federal government based on their religion, national origin, or ethnicity.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Oakland that California must let Washington, D.C. know it plans to stand its ground and protect its resident's civil liberties.

BE IT FURTHER RESOLVED that the Council of the City of Oakland hereby supports SB 31 (Lara), and sends a letter of support to State Senator Nancy Skinner, State Assemblyman Tony Thurmond, State Assemblyman Rob Bonta and Governor Brown.

RE: SUPPORT FOR SB 31 (LARA) RELIGIOUS FREEDOM ACT

Dear State Representatives and Governor Brown,

The City Council of Oakland writes in strong support of SB 31 (Lara) which will block public safety officers from enforcing violations of requirements that people register with the federal government based on their religion, national origin or ethnicity.

After the 9/11 terrorist attacks, the federal government instituted the National Security Exit-Entry Registration System (NSEERS). NSEERS began by requiring special registration from male visitors arriving from Iraq, Sudan and Syria but eventually expanded to 25 countries, most with majority Muslim populations and most in Africa and the Middle East. Registrants were fingerprinted, photographed, and questioned by immigration officers. Since 2002, NSEERS resulted in 80,000 registrants.

This program resulted in zero terrorism convictions.

SB 31 provides a robust state action in protecting our most vulnerable communities from such ineffective and harmful registry programs. California has a duty to protect the rights of its people and ensure equal justice under the law for all, regardless of race, religion, or national origin

The strongest way to protect civil liberties is to establish privacy protections for all Californians, regardless of their national origin or immigration status. SB 31 will prohibit the state from sharing information to a federally compiled registry of Muslims in the US. SB 31 will restrict law enforcement from asking for or collecting information on a person's religion, except when there is a nexus with a criminal investigation or the information is being used to provide religious accommodations. The bill will also terminate, to the extent of any conflict, any existing agreements that make any agency or department information or database available in conflict with these provisions.

Sincerely,

City Council of Oakland

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2015 MAY 14 PM 5:04

# OAKLAND CITY COUNCIL

Approved as to Form and Legality

  
City Attorney

RESOLUTION No. 85640 C.M.S.

Introduced by Councilmember \_\_\_\_\_

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**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO ENTER INTO A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE FEDERAL BUREAU OF INVESTIGATION (FBI) VIOLENT CRIMINAL THREAT SECTION (VCTS), TO FACILITATE THE JOINT PURCHASE AND INSTALLATION OF A COMPUTER NETWORK INFRASTRUCTURE, COMPUTERS AND FURNITURE AT THE POLICE ADMINISTRATION BUILDING (PAB) TO CREATE A SHARED WORK SPACE FOR THE SAFE STREETS TASKFORCE, AND WAIVING THE ADVERTISING AND BIDDING REQUIREMENTS FOR THE CITY'S EXPENDITURE OF \$63,000.00 TOWARDS THE PURCHASE OF SAID ITEMS**

**WHEREAS**, the City of Oakland is the most violent city in California and was selected in 2014 as one of five cities to be included in the United States Department of Justice's (DOJ) Violence Reduction Network (VRN); and

**WHEREAS**, partnering VRN cities are selected to receive enhanced support from the Federal government to tackle persistent challenges caused by violent crime; and

**WHEREAS**, Oakland's high crime rates and limited staffing levels constrain OPD's capacity for crime investigations and thus the City of Oakland and Alameda County have one of the lowest homicide clearance and conviction rates in California and the United States; and

**WHEREAS**, the FBI Safe Streets Task Force, a program of the DOJ VRN, works to address violent crime in Oakland by providing Agents and resources to aid in investigations and address the most serious types of crime; and

**WHEREAS**, OPD has partnered with the Safe Streets Task Force on a number of recent joint investigations related to gangs, homicides, robberies and fugitives and during this partnership OPD cleared 10 of the 11 homicides which occurred; and

**WHEREAS**, The FBI Safe Streets Task Force has the capacity to dedicate 10 FBI agents to collaborate directly with OPD's Criminal Investigations Division (CID) to expand OPD's current investigations capacity; and

**WHEREAS**, OPD's CID currently only has one small room in the Homicide Section of the PAB for a shared workspace, which is insufficient to house a fully staffed Safe Streets Task Force and provide team members access to FBI resources and computers; and



**WHEREAS**, the proposed workspace in the north (former Alameda County) side of the PAB will be able to accommodate twelve workstations with FBIInet access, a meeting room, an interview room and a break room, so that FBI special agents and OPD officers who at times work up to 48 hours straight on homicide investigations, have an opportunity to eat and rest while still being engaged in a case; and

**WHEREAS**, by sharing space with the OPD homicide detectives, FBI resources are able to be directly infused into an investigation at the very beginning and are aligned with OPD efforts for maximum effectiveness and the shared space allows both agencies to share information related to cases and decrease the likelihood that opportunities for critical and evidence gathering would be missed; and

**WHEREAS**, the one hundred ten thousand dollars (\$110,000) allocated to the project by the FBI and sixty three thousand dollars (\$63,000) allocated to the project by OPD will cover the costs for the computers, desks and furniture and network infrastructure; and

**WHEREAS**, due to the federal funding, the items must be purchased from FBI vendors, therefore, it is in the City's best interests to waive advertising and bidding requirements for the City's expenditures; and

**WHEREAS**, OPD will allocate an additional twenty eight thousand five hundred dollars (\$28,500) directly to the Oakland Public Works Department for electrical, flooring and painting work; and

**WHEREAS**, per the MOU, both OPD and the FBI agree that each party is responsible for the negligent and wrongful acts and omissions by its employees and that this MOU shall be governed by the laws of the state of California and nothing herein should be construed as supplanting any applicable statute, rule, or regulation; and

**WHEREAS**, per the MOU, the FBI agrees that OPD and the City, its employees, officers, directors, agents and representatives are not liable for any claims or damages arising out of any injuries or damages to any of the FBI's security-cleared regular vendors who will be tasked with the build-out at the PAB; and

**WHEREAS**, per the MOU, the FBI's security-cleared regular vendors who work on the build-out at the PAB will obtain and execute right of entry forms from the City prior to commencing work on the build-out; and

**WHEREAS**, per Oakland Municipal Code section 504(1), the City Council must approve intergovernmental MOUs, and authorize the City Administrator to represent the City in all related negotiations, among other things; now, therefore be it

**RESOLVED:** That City Council does hereby authorize the City Administrator or designee to enter into the MOU with the FBI for the joint purchase of a computer network infrastructure, computers and furniture to construct a new shared workspace in the PAB as part of a joint OPD-FBI Safe Streets Taskforce, to be financed by a contribution of one hundred ten thousand dollars (\$110,000) from the FBI and sixty three thousand dollars (\$63,000) of City OPD funds; and be it

**FURTHER RESOLVED:** That, pursuant to Oakland Municipal Code Section 2.04.050.I.5 and for the reasons stated above, the City Council finds that it is in the best

interests of the City to waive advertising and bidding for the City's expenditures towards the Safe Streets Taskforce shared workspace, and so waives the requirements; and be it

**FURTHER RESOLVED** That the City Administrator is authorized to conduct all ongoing negotiations, execute and submit all documents, including but not limited to amendments, modifications and related actions which may be necessary to carry out the basic purpose of this resolution, without increasing the amount of the allocated funds; and be it

**FURTHER RESOLVED:** That said MOU shall be approved as to form and legality by the Office of the City Attorney and placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 02, 2015

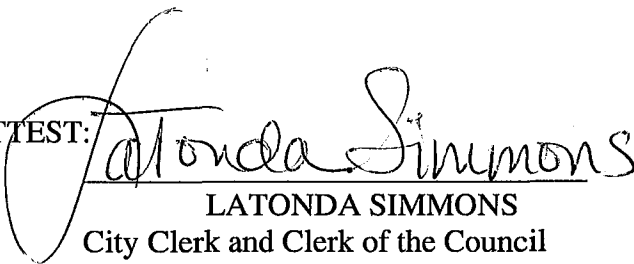
**PASSED BY THE FOLLOWING VOTE:**

AYES – BROOKS, CAMPBELL WASHINGTON, GALLO, ~~GUILLEN~~, KALB, ~~REID~~,  
REID, AND PRESIDENT GIBSON MCELHANEY - 6

NOES - Kaplan - 1

ABSENT - Guillen - 1

ABSTENTION - 0

ATTEST:   
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2016 MAR 31 PM 4: 52

# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Sean Whent  
Chief of Police

**SUBJECT:** Deputizing Task Force Officers

**DATE:** March 28, 2016

City Administrator  
Approval

Date

3/31/16

## RECOMMENDATION

**Staff Recommends That The City Council Approve A Resolution Authorizing The City Administrator To Enter Into A Memorandum Of Understanding (MOU) With The Department Of Homeland Security (DHS), Office Of Homeland Security Investigations (HSI) For The Purpose Of Allowing Particular Oakland Police Department (OPD) Officers To Be Designated As United States Customs Title 19 Task Force Officers (TFOs), Without Additional Compensation, Until The Expiration Date Of The Agreement, Unless Revoked At An Earlier Date By Either OPD Or HSI.**

## EXECUTIVE SUMMARY

OPD wishes to enter into an MOU with the Department of Homeland Security (DHS), Office of Homeland Security Investigations (HSI). The MOU will allow OPD officers in the Criminal Investigation Division (CID) to be deputized as HSI Task Force Officers (TFOs), under Title 19, Section 1401, U.S. Code. TFOs will be able to partner with HSI special agents and work collaboratively to investigate gang and violent group crimes, drug and weapons smuggling, and human-trafficking crimes that have a nexus in Oakland and transcend City boundaries. This partnership will provide the City of Oakland and OPD with more resources to investigate these complex crimes. OPD officers deputized as TFOs under this MOU will have no authority to enforce immigration law, as stipulated by the accompanying documentation.

## BACKGROUND AND LEGISLATIVE HISTORY

OPD is committed to reducing crime and serving the community through fair, quality policing. OPD officers and leadership are tasked with investigating many crimes including violent, gang-related and human trafficking crimes. OPD's Criminal Investigation Division (CID) can more readily address crime and criminal networks that transcend Oakland geographic borders through partnerships with other law enforcement agencies.

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Public Safety Committee  
April 26, 2016

HSI is a critical investigative arm of DHS that focuses on combating criminal organizations illegally exploiting America's travel, trade, financial, and immigration systems. HSI's workforce includes special agents, analysts, auditors, and support staff around the country to support complex investigations. HSI supports local agencies like OPD by collaborating to create dramatically better outcomes, otherwise known as a force multiplier approach, to conduct investigations. OPD's Criminal Investigation Division (CID) can leverage this network in support of local investigations. Additionally, HSI has forensic lab capabilities that exceed those of OPD's Crime Lab. HSI also has broader legal authority than a single municipality to enforce a diverse array of federal statutes, which can help OPD in prosecuting crimes such as gang or group-initiated criminal violence, narcotics and weapons smuggling, and human trafficking.

HSI partnerships have helped many jurisdictions; in California partnerships include the cities of Bakersfield and Los Angeles, the counties of San Mateo and San Diego, and the City and County of San Francisco. HSI has worked with the California Highway Patrol (CHP) on investigations related to illegal drug trafficking. HSI has partnered with the San Francisco Police Department (SFPD) on human trafficking investigations – including those investigations related to sexual exploitation and prostitution as well as labor exploitation. Partnerships with the Bakersfield Police Department (BPD) focused on drug trafficking and violent gang activity. HSI has assisted each of these jurisdictions in reducing the violent crime, drug trafficking, firearms offenses, and gang activity which plague neighborhoods and victimize entire communities.

These HSI partnerships helped cities similar to Oakland with both investigations and enforcement – bringing prosecutions where local District Attorneys collaborate with Federal agencies such as the Federal Bureau of Investigation (FBI), the United States Attorney's Office, the Alcohol Tobacco, Firearms, and Explosives Agency (ATF) and the Drug Enforcement Agency (DEA). In some cases, indicted gang-member suspects have faced Racketeer Influenced and Corrupt Organization (RICO) Act charges designed to address organized and gang crimes.

HSI also helps cities' anti-human trafficking efforts including addressing the commercially sexually exploited children (CSEC) crimes. HSI participates in all 61 Internet Crimes Against Children (ICAC) Task Forces across the United States, which are led by state and local law enforcement agencies.

## **ANALYSIS AND POLICY ALTERNATIVES**

HSI is authorized under Title 19, Section 1401 of the U.S. Code to cross-designate other federal, state and local law enforcement officers, known as Title 19 TFOs, to investigate and enforce customs laws. OPD officers deputized as TFOs, under officer-specific agreements with HSI (see **Attachment A**), will be able to work directly with HSI special agents. OPD will benefit greatly from this partnership with HSI because of the additional resources which will support OPD investigations of violent, gang-related and human trafficking crimes, including better forensics capabilities, a greater network for violent or trafficking crime-related data sharing, and funding support through HSI's State Local OverTime (SLOT) funding for OPD officers to be paid for overtime hours.

Through this MOU, OPD and HSI will agree to designate specific officers working in OPD's Criminal Investigation Division (CID) and involved in particular investigations. OPD, HSI, and the officers will each sign particular agreements for all provisions of this MOU. Each officer will be designated as a TFO and serve as a TFO without additional compensation, until the expiration date of the agreement unless revoked at an earlier date by either OPD or HSI. Each TFO will receive additional training to comply with firearms and other policing laws of different relevant jurisdictions.

In accordance with Title 19 U.S.C. § 1589a, as Customs Officers, HSI Special Agents (SAs) and Title 19 TFOs are authorized to enforce the full range of federal offenses. However, as outlined in the U.S. Immigration and Customs Enforcement Homeland Security Investigations Directive Form (**Attachment B**) and Designation, Customs Officer (Excepted) – Title 19 Task Force Officer Form (**Attachment A**), HSI will not have any authority whatsoever to enforce administrative violations of immigration law. OPD TFOs will not have any federal authority to arrest any individuals because of their immigration status.

### **PUBLIC OUTREACH / INTEREST**

No outreach was deemed necessary for this MOU. The public has a significant interest in ensuring that OPD has resources to conduct thorough investigations that lead to prosecutions for crimes that occur in Oakland. This MOU will help OPD solve crimes and work toward reducing crime while promoting public safety.

### **COORDINATION**

This report and legislation have been reviewed by the Office of the City Attorney and the Controller's Bureau.

### **FISCAL IMPACT**

Funds paid to OPD to fund overtime hours for OPD officers working as HSI TFOs will be deposited into OPD funding accounts as listed below. This MOU between HSI and OPD will not result in any direct fiscal impact to the City, as HSI will fund the overtime hours for OPD staff to participate in the joint investigations. HSI will pay for any training costs required by HSI to ensure OPD officers acting as TFOs are properly trained for the assignment, at no cost to OPD or the City.

<b>Fiscal Year</b>	<b>Fund Source</b>	<b>Organization</b>	<b>Account</b>	<b>Project</b>	<b>Program</b>	<b>Amount</b>
2015-16	2995	102310	51214	TBD	PS03	TBD

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**SUSTAINABLE OPPORTUNITIES**

**Economic:** There are no economic opportunities associated with this report.

**Environmental:** There are no environmental opportunities associated with this report.

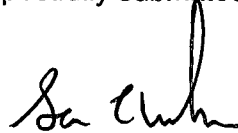
**Social Equity:** All residents benefit from greater public safety. Inter-agency partnerships allow OPD to enhance its investigative capacity. Successful investigations and more prosecutions of criminal activity will likely occur from expanded partnerships between OPD and HSI.

**ACTION REQUESTED OF THE PUBLIC SAFETY COMMITTEE**

Staff Recommends That The City Council Approve A Resolution Authorizing The City Administrator To Enter Into A Memorandum Of Understanding (MOU) With The Department Of Homeland Security (DHS), Office Of Homeland Security Investigations (HSI) For The Purpose Of Allowing Particular Oakland Police Department (OPD) Officers To Be Designated As United States Customs Title 19 Task Force Officers (TFOs), Without Additional Compensation, Until The Expiration Date Of The Agreement, Unless Revoked At An Earlier Date By Either OPD Or HSI.

For questions regarding this report, please contact Bruce Stoffmacher, Legislation Manager, OPD Research and Planning, at (510) 238-6976.

Respectfully submitted,



Sean Whent  
Chief of Police  
Oakland Police Department

Prepared by:  
Bruce Stoffmacher, Legislation Manager  
OPD, Research and Planning, OCOP

**Attachments (2)**

- A: Designation, Customs Officer (Excepted) – Title 19 (Task Force Officer) Form
- B: U.S. Immigration and Customs Enforcement Homeland Security Investigations Directive Form

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Public Safety Committee  
April 26, 2016

<b>EXPIRATION DATE:</b>
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): <small>(Date of training completion or date recertified by the SAC for an additional 2 years prior to expiration of first 2 years.)</small>	
11. Cancellation/Revoked Date:	Cancellation Authorizing Signature (HSI): (Expires 2 years from date above (#10), if no signature present)	

12. TFO Status:

**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. *(ICE or DHS e-mail required)*

**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. *(ICE or DHS e-mail required)*

**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. *(ICE or DHS e-mail recommended; required to fly armed.)*

13. Authorities Granted:

Only the marked duties are authorized for the TFO.

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.

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.

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.

Perform other law enforcement duties which may be authorized under 19 U.S.C. § 1589a.

Make seizures of property in compliance with the Constitution of the United States and the Customs laws.

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.

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



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

**HSI Directive 14-02: Law Enforcement Officers Designated to Act as Customs Officers (Excepted) for Investigative Purposes – Domestic**

**Issue Date:** May 7, 2014  
**Effective Date:** May 7, 2014  
**Superseded:** U.S. Immigration and Customs Enforcement (ICE) Office of Investigations (OI) Directive 05-006, "Personnel Designated to Act as Customs Officers (Excepted) for Investigative Purposes," dated May 3, 2005; and ICE OI memorandum, "Cross Designation Authority," dated April 8, 2004.

**Federal Enterprise Architecture Number:** 306-112-002b

1. **Purpose/Background:** This Directive provides comprehensive guidance regarding the designation of federal, state, local, and tribal law enforcement officers (LEOs) to perform the duties of a Customs Officer (Excepted), hereinafter referred to as a *Title 19 Cross-Designated Task Force Officer (Title 19 TFO)*, for ICE Homeland Security Investigations (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 federal, state, local, and tribal agencies may be designated as Customs Officers (Excepted) (Title 19 TFOs) and authorized to perform the full range of law enforcement duties of a Customs Officer, as described in Section 4.10, below, as authorized by an HSI Special Agent in Charge (SAC). The Title 19 TFOs may exercise this authority only when operating on behalf of HSI.
  - 2.1. In accordance with 19 U.S.C. § 1589a, as Customs Officers, HSI Special Agents (SAs) and Title 19 TFOs are federal LEOs and are authorized to enforce the full range of federal offenses, including violations of other titles of the U.S. Code such as Title 18 and Title 31. However, in designating LEOs as HSI Title 19 TFOs, *HSI does not convey the authority to enforce administrative violations of immigration law.*
  - 2.2. **Cross-designation of Other Federal LEOs:** HSI SACs may cross-designate *other federal LEOs* in two circumstances: 1) when the federal officer is a *full-time* participant on an *HSI-led* task force or assigned *full-time* to an HSI group; or 2) where special circumstances exist and have been approved with *written* concurrence of both the affected SAC and the Assistant Director (AD), Investigative Programs. In either of these circumstances, the cross-designation must be revoked immediately upon the federal LEO's reassignment outside of the HSI-led task force or group, when the participation is reduced to less than full-time, or when there is a change in the special circumstances that necessitated the designation.

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Law Enforcement Officers Designated to Act as Customs Officers (Excepted) for Investigative Purposes – Domestic

FOR OFFICIAL USE ONLY – LAW ENFORCEMENT SENSITIVE

Attachment B

- 2.3. Other Title 19 LEOs as HSI TFOs:** U.S. Customs and Border Protection LEOs or 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. However, while serving as HSI TFOs, these LEOs shall attend training that meets the standards set forth herein, are bound by the provisions of this Directive, and are under the authority of the HSI SAC when conducting investigations directed by HSI.
- 2.4. Demand for Assistance of Other LEOs in Support of Title 19:** Under 19 U.S.C. § 507(a)(2), as Customs Officers, HSI SAs and Title 19 TFOs have the authority to demand the assistance of *any person* in the conduct of their duties. This authority may be used to demand the assistance of other LEOs (including *non-Title 19 TFOs* who may be working with the HSI LEO or the Title 19 TFO).
- 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 of the 26 domestic HSI areas of responsibility (AORs) designated by the SAC to manage the needs of the local field office's employees regarding badges, seals, and credentials.
- 3.3. 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 was delegated or how 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."
- 3.4. HSI TFO Course (TFO Course):** This course, referred to herein as the "TFO Course," is a curriculum designed by the HSI Headquarters (HQ) Contraband Smuggling Unit (CSU) and delivered by each HSI office to educate and enhance the ability of Title 19 TFOs to leverage their respective parent agency's authorities, along with the authority granted to them through Title 19.
- 3.5. HSI TFO Identification:** HSI TFO Identification consists of badge, credentials, or other identification, as appropriate, issued to a Title 19 TFO by HSI.
- 3.6. ICE Badge and Credential Program Manager:** The designated ICE official in the Office of Professional Responsibility (OPR)'s 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.

- 3.7. National TFO Coordinator:** An HSI employee assigned to CSU at HSI HQ who coordinates and manages the TFO Program nationally, including the Title 19 TFO Program. The National TFO Coordinator is the primary point of contact for the field TFO Coordinators (see Section 3.12).
- 3.8. Parent Agency:** The employing law enforcement agency of the TFO assigned to HSI.
- 3.9. State and Local Overtime (SLOT):** Dedicated federal funding for state and local TFOs working with HSI. This funding varies annually and is provided to each HSI office for distribution to TFOs in its AOR who work overtime to accomplish the HSI mission.
- 3.10. Task Force Officer (TFO):** A sworn domestic LEO assigned to, or assisting, an HSI task force or group on a regular basis. (Note: HSI has TFOs who have been Title 19 cross-designated and TFOs who have not been cross-designated; both categories of TFOs assist in accomplishing the HSI mission.)
- 3.10.1. Full-Time TFO:** A Full-Time TFO 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 (see the Note following Section 3.10.3).
- 3.10.2. Part-Time TFO:** A Part-Time TFO is *co-located* with HSI and is working directly for an HSI first- or second-line supervisor for a minimum of 8 but fewer than 30 hours per week and is significantly contributing to investigations (see the Note following Section 3.10.3).
- 3.10.3. On-Call TFOs:** On-Call TFOs do not meet the standards of either Part-Time or Full-Time TFOs, but are occasionally called upon to assist HSI, including officers working in a uniformed capacity who do not report directly to HSI.
- (Note: “Significantly contributing to investigations” in Sections 3.10.1 and 3.10.2 refers to any Full-Time and Part-Time TFO who is the lead case investigator or has been the affiant on multiple search/arrest warrants for HSI investigations. Additionally, the TFO is generally involved with HSI on a daily basis, and his or her work has led to seizures and arrests, as verified through seizures, arrests, cases, and reports in TECS.)
- 3.11. TFO Assistant Special Agents in Charge (ASACs):** An ASAC designated within each of the 26 domestic HSI AORs who manages the HSI AOR’s TFO program, including the Title 19 TFO program, and serves as the AOR’s primary HQ and CSU management point of contact on TFO matters.
- 3.12. TFO Coordinators:** TFO Coordinators (previously referred to as Title 19 Coordinators) are permanent HSI employees within each of the 26 domestic HSI AORs who coordinate

and manage their AOR's TFO program, including Title 19 TFOs. The TFO Coordinators must be LEOs with Customs Officer's authority.

- 3.13. Title 19 Cross-Designated TFO (Title 19 TFO):** An LEO who is trained and designated by HSI to perform the duties of a Customs Officer (Excepted) for investigative purposes. These TFOs are referred to as "Title 19 TFOs" throughout this Directive and in other HSI policy and other documents.
- 3.14. TFO Data Call:** An annual survey of all HSI domestic offices that compiles information regarding all HSI TFOs.
- 3.15. Unique Federal Agency Number (UFAN):** A unique number issued by the Transportation Security Administration to all federal law enforcement agencies that have employees flying armed on domestic commercial flights.

#### **4. Responsibilities.**

- 4.1.** The **Executive Associate Director (EAD)** of HSI is responsible for the oversight over all TFOs working within HSI. (Note: In ICE Delegation Order 04-006, dated March 26, 2004, or as updated, the Director of ICE delegated to the EAD of HSI the authority to designate persons to act as Title 19 cross-designated Customs Officers (Excepted), without additional compensation. Consistent with this delegation order, as set forth in this Directive, the EAD of HSI redelegated this authority to HSI SACs. This authority may not be delegated below the level of a SAC.)
- 4.2.** The **Assistant Director (AD), Domestic Operations**, is responsible for:
- 1) Transmitting and collecting the data required in the annual TFO Data Call (see Section 5.4), and
  - 2) Distributing SLOT funds to HSI offices based on TFO deployment and usage derived from the annual data call.
- 4.3.** The **Unit Chief, CSU**, is responsible for policies, programmatic oversight, and administrative issues associated with all HSI TFOs. The Unit Chief, CSU, is also responsible for:
- 1) Designating a National TFO Coordinator to serve as the subject matter expert (SME) and central point of coordination for all HSI TFO matters;
  - 2) Managing and providing oversight of a national HSI TFO Program, including the Title 19 TFO Program delineated in this Directive;
  - 3) Maintaining a roster of current TFO Coordinators;
  - 4) Validating all Title 19 cross-designation requests;

- 5) Approving and processing TFO access to ICE systems requests;
- 6) Approving and processing HSI TFO Identification requests;
- 7) Approving and processing TFO background requirements/requests;
- 8) Providing each HSI office's TFO Coordinator with the standardized curriculum and training materials for the TFO Course (see Section 5.5); and
- 9) Updating training materials related to the TFO Course on an annual basis.

**4.4. Within CSU, the National TFO Coordinator is responsible for:**

- 1) Managing the HSI TFO Program for all TFOs (Title 19 TFOs and other TFOs);
- 2) Coordinating and facilitating delivery of the TFO Course materials (see Section 5.5);
- 3) Updating the TFO Course materials periodically, as needed;
- 4) Processing requests and confirming available funding for the HSI TFO Identification;
- 5) Initiating the periodic and routine national inventory of HSI TFO Identification;
- 6) Ensuring the prompt return of revoked or cancelled HSI TFO Identification;
- 7) Serving as the primary point of coordination with OPR for background checks for TFOs;
- 8) Coordinating all TFO badge and credential matters with the ICE Badge and Credential Unit; and
- 9) Compiling the information provided to them by HSI field offices for the annual TFO Data Call (see Section 5.4).

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

- 1) Designating Title 19 TFOs;
- 2) The management and oversight of all TFOs;
- 3) The strategic planning and operation of the local TFO Program;
- 4) Delivering the TFO Course locally, as required (see Section 5.5);
- 5) Providing and certifying instructors who are SMEs to deliver the TFO Course (see Section 5.5.);

- 6) The administrative issues and requests that grant TFOs access to ICE systems, equipment, and sensitive information;
- 7) Designating HSI personnel from their AOR to serve as the TFO ASAC, the BCC, and the TFO Coordinator;
- 8) Advising CSU of any changes to these designations;
- 9) Ensuring that TFOs assigned to HSI are in good standing with their parent agency; and
- 10) Removing any TFOs if sufficient derogatory information is discovered.

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

- 1) Implementing the strategic planning and operation of the local TFO Program as set forth by the SAC;
- 2) Managing the delivery of the TFO Course locally, as required (see Section 5.5);
- 3) Overseeing the administrative issues and requests that grant TFOs access to ICE systems, equipment, and sensitive information; and
- 4) Serving as the primary management point of contact with HQ for matters regarding TFOs.

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

- 1) The day-to-day supervision of all Full-Time TFOs and Part-Time TFOs who are assigned to them or to their units, and managing the TFOs' activities and performance;
- 2) Serving as the primary contact for, and supervising the use of, Title 19 authority by On-Call TFOs who are assigned to them or to their units;
- 3) Ensuring proper familiarization of TFOs with HSI resources, including tasks such as the use and access of appropriate information systems;
- 4) Ensuring that TFOs meet the training requirements to be designated as Title 19 TFOs, if so required;
- 5) Completing the annual TFO Data Call to accurately account for the TFOs assigned to them or to their units (see Section 5.4);
- 6) Assisting TFOs who need ICE e-mail addresses and databases (see related background requirements in Section 5.1);

- 7) Inventory of HSI TFO Identification 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. Within their respective AORs, **TFO Coordinators** are responsible for:

- 1) Managing the TFO Program for all TFOs (Title 19 TFO and other TFOs);
- 2) Coordinating and facilitating delivery of the TFO Course (see Section 5.5);
- 3) Ensuring that these TFO Courses are provided utilizing the most recent materials provided by CSU, since they are updated periodically;
- 4) Ensuring that the local SMEs providing instruction for the TFO Course meet the necessary requirement set forth in this Directive (see Section 5.5.6);
- 5) Ensuring that the local SAC has approved the SMEs to instruct for the TFO Course (see Attachment B);
- 6) Ensuring that all necessary documents regarding HSI TFO Identification are completed, filed, and updated, for any TFOs authorized;
- 7) Ensuring the periodic and routine inventory of HSI TFO Identification;
- 8) Ensuring the prompt return of revoked or cancelled HSI TFO Identification;
- 9) Ensuring the completion of background checks for TFOs within their AOR;
- 10) Coordinating all TFO badge and credential matters with the office BCCs;
- 11) Serving as the liaison between an HSI office and CSU on all TFO-related matters;
- 12) Providing a copy of this Directive to all Title 19 TFOs, along with the first- and second-line HSI supervisors who manage these TFOs;
- 13) Compiling the information provided to them by HSI supervisors for the annual TFO Data Call (see Section 5.4);
- 14) Forwarding the completed annual TFO Data Call to CSU through HSI Domestic Operations upon completion; and
- 15) Collecting badges and/or credentials from TFOs separating from HSI and returning those badges and/or credentials to the ICE Badge and Credential Unit.

**4.9. OPR's 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) determinations, final determinations, and Homeland Security Presidential Directive (HSPD)-12 vetting;
- 3) Scheduling, tracking, and receiving background investigations and reinvestigations of TFO personnel, as appropriate;
- 4) Ensuring the implementation and applicability of the Continued Evaluation Program;
- 5) Notifying the National TFO Coordinator, as appropriate, of all TFO fitness determinations;
- 6) 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
- 7) Ensuring compliance with all applicable laws, rules, and regulations.

**4.10. Title 19 TFOs are responsible for performing a number of roles while assigned to an HSI group or task force. Title 19 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 as Title 19 TFOs. Title 19 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 violations of law;
- 2) Leveraging resources, facilitating communication, and conducting deconfliction, as appropriate, and serving as a conduit between HSI and their parent agencies;
- 3) Serving as SMEs on cases prosecuted in state and local court;
- 4) Safeguarding HSI TFO Identification from unauthorized use and theft;
- 5) Taking a physical inventory when required or requested by a supervisor;
- 6) Obtaining and regularly checking a DHS e-mail address in order to obtain necessary legal and policy updates distributed to HSI, changes or updates to the UFAN, and notifications related to the inventory of HSI TFO Identification. (Note: Personal e-mail accounts may not be used for official HSI business.); and



- 7) Providing the requested information for the annual TFO Data Call to their HSI supervisor and/or TFO Coordinator (see Section 5.4).

**4.11.** The **Badge and Credential Coordinator (BCC)** is responsible for coordinating 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. All Title 19 TFOs are issued HSI TFO Identification. Full-Time Title 19 TFOs are issued TFO badges and credentials, whereas Part-Time and On-Call Title 19 TFOs are issued only credentials.

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

**5.1. Background Check for Title 19 TFOs:** Prior to cross-designating Title 19 TFOs, HSI offices will ensure that local background checks were conducted; these checks must be done prior to issuing HSI TFO Identification. The completion of the background checks will be the responsibility of the TFO Coordinator. This local background check will include:

- 1) TECS;
- 2) The National Crime Information Center (NCIC);
- 3) The National Law Enforcement Telecommunications System (NLETS);
- 4) All state and local law enforcement indices pertinent to the AOR; and
- 5) A query, through the TFO's parent agency, of any pertinent derogatory information in the TFO's work history (A letter or e-mail correspondence from the parent agency stating that the TFO is in "good standing" will suffice.).

All background checks must be completed *prior to requesting designation and prior to receiving HSI badges and/or credentials.*

**5.2. Additional TFO Background Checks and Investigations:** TFOs require varying levels of background checks or investigations in addition to those required for being Title 19 TFOs outlined above (Section 5.1), depending on the requirements and authorities granted to them. The background investigation will be commensurate with the position sensitivity as described in federal investigative standards. The minimum investigative standard at ICE is a National Agency Check with Inquiries (NACI). These requests are coordinated with OPR PSU through CSU; HSI offices shall not contact OPR PSU directly. The requests for background investigations for TFOs include the following:

- 1) TECS Access for all TFOs are coordinated with by the National TFO Coordinator (CSU should be contacted for further details);

- 2) Personal Identification Verification (PIV) cards for all TFOs are coordinated by the National TFO Coordinator (CSU should be contacted for further details); and/or
- 3) National security clearances for state, local, tribal, and private sector (SLTPS) personnel, including all Title 19 TFOs, 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 SLTPS security clearances. In those rare instances where this type of clearance is required for a Title 19 TFO, the request shall be coordinated by the National TFO Coordinator. (Note: CSU should be contacted for further details.)

The completion of the paperwork to request a background check will be the responsibility of the TFO Coordinator and the TFO.

**5.3. HSI TFO Identification:** CSU, along with the ICE Badge and Credential Program, will coordinate the issuance of all HSI TFO Identification for Title 19 TFOs in accordance with the following procedures:

**5.3.1. Requesting HSI TFO Identification:** The HSI SAC will request HSI TFO Identification from the Unit Chief, CSU, by submitting a "*Title 19 TFO Credential Request*" memorandum requesting the appropriate identification and certifying that the proper background checks have been completed (see Section 5.2). The memorandum should contain at a minimum the following three documents:

- 1) A completed Designation Form (ICE Form 73-001);
- 2) A copy of the Memorandum of Understanding (MOU) with the TFO's parent agency (ICE Form 73-002);
- 3) A copy of the memorandum certifying that the TFO attended the TFO Course (Attachment A); and
- 4) A memorandum requesting identification for Title 19 cross-designated officer. (Attachment B).

**5.3.2. Issuing HSI TFO Identification:** The HSI SAC will issue *HSI TFO credentials and badges only* to Title 19 TFOs who are assigned *full-time to an HSI group or to an HSI-led task force* (e.g., Document and Benefit Fraud Task Forces, Border Enforcement Security Task Forces (BEST), Internet Crimes Against Children Task Forces, etc.).

The HSI SAC will issue *HSI TFO credentials only* to Part-Time TFOs; On-Call Title 19 TFOs; and TFOs who are uniformed, such as Marine Patrol Officers working in Customs waters or Sheriff's Deputies conducting highway interdictions.

HSI TFO Identification is identified by a control number and will be collected by the HSI SAC upon completion, revocation, or expiration of the Title 19 TFO's service.

- 5.3.3. Tracking and Inventorying HSI TFO Identification:** HSI TFO badges and credentials are tracked in FACTS. In FACTS, these items are issued to the TFO's supervisors, then "externally issued" to the TFO. HSI supervisors are ultimately responsible for the inventory in FACTS of all assigned items, including HSI badges and credentials that are issued to TFOs under their supervision.

*It is required that, effective October 1, 2014, all Full-Time and Part-Time TFOs and those On-Call TFOs who will need to fly armed receiving a badge or credentials have access to the ICE local area network (LAN) and have an ICE or other DHS e-mail address in order to properly inventory their assigned items and receive policy and legal updates as well as notices and changes to the UFAN. It is recommended that On-Call TFOs, even those who are not anticipated to fly armed under their HSI authority, acquire an ICE e-mail address to the extent that it is possible based on their proximity to an HSI office.*

Any HSI TFO badges and/or credentials previously assigned to a TFO who has separated, retired, or relocated must be returned to his or her TFO Coordinator, who will return the items to the ICE Badge and Credential Unit at the below address:

ICE  
One East Broad St. Suite 200  
Bethlehem, PA 18018-5913

(Note: No additional information, names, or descriptors should be included on the outside of the package or for the addressee, due to the sensitive contents of the package.)

- 1) Prior to shipping, a short explanation of why the items are being returned should be e-mailed to the ICE Badge and Credential Unit ([icebadgecredential@ice.dhs.gov](mailto:icebadgecredential@ice.dhs.gov)) and the HSI TFO mailbox ([HSITFO@ice.dhs.gov](mailto:HSITFO@ice.dhs.gov)). Additionally, a copy of the *cancelled Designation Form (ICE Form 73-001)* must be sent to the HSI TFO mailbox ([HSITFO@ice.dhs.gov](mailto:HSITFO@ice.dhs.gov)). It is recommended that the tracking number of these packages be included in the e-mail.
- 2) A copy of the cancelled Designation Form (ICE Form 73-001) signed by the HSI SAC or his or her designee should be included in the package to the Badge and Credential Unit.
- 3) Questions regarding the return/cancellation of a TFO's Designation should be addressed to the ICE Badge and Credential Program Manager at (610) 861-8520.

- 5.3.4. Request for Retaining HSI TFO Credentials:** In order for an HSI TFO's credentials to be cancelled and returned to the Title 19 TFO, the TFO must have participated with HSI in a full-time, part-time, or on-call capacity and have spent a minimum of 36 months as a

Title 19 TFO, or at least the previous 12 months consecutively, if the TFO is retiring from his or her parent agency while assigned to HSI. TFO time served under the former ICE OI shall be included in these calculations.

- 5.3.5. Request for Retaining HSI TFO Badges in Lucite:** To retain his or her HSI TFO Badge in Lucite, the Title 19 TFO must have participated with HSI in a full-time capacity and have spent a minimum of 60 months as a Title 19 TFO, or at least the previous 18 months consecutively, if the TFO is retiring from his or her parent agency while assigned to HSI. TFO time served under the former ICE OI shall be included in these calculations.
- 5.4. Annual TFO Data Call:** The Annual TFO Data Call will be sent out, via tasking from Domestic Operations, during the second quarter of each fiscal year, providing a period of 4 weeks to respond. The data call will require each HSI office to provide and/or confirm detailed information regarding *all* TFOs in its AOR. The information will be completed using a pre-populated Excel spreadsheet and submitted to the Domestic Operations Manager. In addition to the spreadsheet, each HSI office will also submit a signed memorandum from the SAC to the AD, HSI Domestic Operations, validating and approving the data that is submitted.

The data collected will be summarized and utilized by HSI to project costs, assess requirements, and prioritize resources both currently and in the future. Each HSI office will receive a summary of the results by the third quarter of each fiscal year.

**5.5. Training.**

- 5.5.1. HSI TFO Course (TFO Course):** Prior to performing the duties of a Title 19 TFO, all designated personnel will receive standardized training through a curriculum designed by CSU to be delivered by each HSI office to educate and enhance the ability of TFOs to leverage the authorities of their respective parent agencies' authorities, along with Customs authority granted to them through Title 19.

It is strongly recommended that HSI TFOs who will not be designated as Customs Officers (Excepted) as well as Title 19 TFOs also attend this broad-based training which provides an overview to all HSI TFOs on a full range of HSI's resources, authorities, and operations.

- 5.5.2. TFO Course Curriculum and Instructor Requirements:** The comprehensive coursework listed below focuses on a number of law enforcement topics which will facilitate the TFO's immersion into the general HSI environment regardless of the TFO's investigative concentration.

The TFO Course will be a minimum of 28 hours of instruction, and will feature the following courses:

- 5.5.3. Customs Law:** 8 hours of instruction on Customs Law in a format approved by the Office of the Principal Legal Advisor (OPLA). This block of instruction will include 2

hours of subject review and a standardized test. To successfully complete the training, the TFO must have a passing score of a minimum of 70 percent on the standardized test. The TFO may take the test more than once in order to obtain a passing score. All written tests and results will be maintained by the TFO Coordinator for 4 years. If an officer is unable to obtain a passing score, that officer will not be Title 19 cross-designated, but may continue to attend the course, because the course is open to all TFOs, including TFOs who will not receive Title 19 authority.

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 Criminal Law Section attorney, with at least 6 months experience.

**5.5.4. Use of Force:** 2 hours of instruction on (a) flying armed, and (b) 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.

**5.5.5. Integrity Awareness:** 2 hours of TFO-specific integrity instruction from OPR.

The instructor must be an OPR supervisor or an OPR SA with at least 1 year of OPR investigative experience.

**5.5.6. 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, as applicable.

- 1) Introduction to HSI: The instructor must be an HSI supervisor. The TFO Coordinator should be present during this block as well.
- 2) 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.
- 3) 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.
- 4) 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.

- 5) Firearms Smuggling/Counter-Proliferation: The instructor must be an HSI supervisor who currently supervises counter-proliferation or firearms smuggling investigations, or an HSI SA or TFO with at least 3 years of HSI counter-proliferation or firearms smuggling investigative experience.
- 6) Commercial Fraud/Intellectual Property Rights: The instructor must be an HSI supervisor who currently supervises commercial fraud or intellectual property rights investigations, or an HSI SA or TFO with at least 3 years of HSI commercial fraud or intellectual property rights investigative experience.
- 7) 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.
- 8) 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.
- 9) TECS/Seized Asset and Case Tracking System (SEACATS)/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 Intelligence Research Specialist with at least 3 years of HSI intelligence research experience.  
  
With regard to the SEACATS portion of this course, the instructor may be the field office's Seized Property Specialist (SPS).  
  
With regard to the TECS portion of this course, the instructor may be a field office's TECS Systems Control Officer (SCO).
- 10) 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.
- 11) Undercover Policy/Certified Undercover Operations (CUC): The instructor must be a current or former HSI CUC Lead 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.
- 12) 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 TFO who is a Designated Technical Agent.

- 13) **Title III:** The instructor must be an HSI supervisor or an HSI SA or TFO who has been the supervisor, affiant, case agent, or co-case agent on an HSI investigation involving an HSI court-authorized electronic interception operation.
- 14) **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 TFO who handles or is experienced with asset sharing/SLOT programs for a field office.
- 15) **HSI Forensic Laboratory:** The instructor must be the field office's Evidence Recovery Team Supervisor, an HSI supervisor, or an HSI SA with at least 3 years of HSI investigative experience.
- 16) **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.
- 17) **Evidence Procedures and DHS Forms 6051:** The instructor for this course will be the local SPS, 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 DHS Forms 6051.
- 18) **Other Classes 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 TFO with at least 3 years of HSI investigative experience with demonstrated subject matter expertise on that topic.
- 5.5.7. Certification of Training:** Within 30 days after the completion of a TFO Course, the HSI SAC must send a memo to the Unit Chief, CSU, certifying that the course contained all required components and that all instructors met the standards set forth in this Directive. The SAC must attach a copy of the agenda (including instructor names and titles for each course), and a completed roster for the course, including all information as set forth in Attachment A (i.e., name, last four digits of the Social Security Number, date of birth, parent agency, and whether or not Title-19 cross-designated). Requests for cross-designation will not be accepted without this certification.
- 5.5.8. Memorandum of Understanding:** When HSI determines that it is necessary for TFOs to perform the duties of a Customs Officer (Excepted), the HSI SAC will execute an MOU (ICE Form 73-002) with the participating parent agency. The MOU will outline the HSI duties that the designated Title 19 TFO will be authorized to perform upon successful completion of training; however, the duties may be restricted on each TFO's Designation Form.
- 5.5.9. Designation and Issuance of the Designation Form:** All authorized designations will be documented in writing, using a "Designation, Customs Officer (Excepted) – Title 19

Task Force Officer” (Designation Form) (ICE Form 73-001) approved by an HSI SAC. The use of any other form, letter, or prior edition of the Designation Form is strictly prohibited.

- 1) The Designation Form sets forth the authorities that may be granted to a Title 19 TFO and the endorsements and restrictions that may apply. The HSI SAC may limit the scope of the designation to certain activities and/or within a particular AOR by so annotating the Designation Form.
  - a) Unless otherwise limited on the Designation Form, the Title 19 TFO will have the same authority as HSI SAs when enforcing customs laws.
  - b) Unless otherwise limited on the Designation Form, the authority of a designated Title 19 TFO is valid anywhere within the United States, its territories, or customs waters, and may be exercised as such.
  - c) Title 19 TFOs may use the authority granted by their designation only when performing official HSI duties.
  - d) Title 19 TFOs must immediately contact the assigned HSI supervisor when their employment status within their agency or department changes, e.g., suspension, promotion, retirement, or resignation.
- 2) 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). 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 eligible.
  - a) Exclusion of Title 19 Training Received Prior to this Directive: Title 19 TFOs who attended the 12-hour Title-19 cross-designation training *may not be redesignated* without attending the TFO Course provided as of the date of issuance of this Directive or any successor course; only the 28-hour TFO Course provided as of the date of issuance of this Directive or any successor course qualifies a Title 19 TFO for redesignation after 2 years.
  - b) Inclusion of TFO Courses Piloted at HSI HQ in 2012 and 2013: The two “BEST TFO Academy” courses piloted at HSI HQ in 2012 and 2013 fulfill the requirements of the TFO Course and those TFOs who attended may be redesignated for an additional 2 years without additional training, as set forth in this Directive.
- 3) Revocation or Cancellation of Designation: The HSI SAC is responsible for ensuring that Designation Forms and HSI TFO Identification are issued only to current Title 19



TFOs, and that revoked or expired identifications are returned to the BCC and transferred/returned in FACTS.

- a) Designations may be revoked by the HSI SAC, or his or her designee, at any time.
  - b) Designations must be revoked if Title 19 TFOs are separated from their agency, transferred outside the SAC's AOR, or if their parent agencies change.
  - c) When revoked or expired, the issuing HSI SAC must collect the HSI TFO Identification from the Title 19 TFO. SACs will refer to Office of Firearms and Tactical Program policy regarding the destruction or return of HSI badges and/or credentials.
- 4) Accountability for Designation Forms and HSI TFO Identification: Each HSI field office must maintain all the Designation Forms for the duration of the Title 19 TFO's designation.
- a) HSI SACs will review and inventory, on a biannual (every 6 months) basis, all HSI TFO Identification and Designation Forms issued by their office. Additionally, HSI SACs or their designees or the BCCs, in conjunction with the Title 19 TFOs supervisors, are responsible for physically inventorying and verifying the HSI TFO Identification in FACTS.
  - b) The loss or theft of any HSI TFO Identification must be immediately reported to the issuing HSI SAC, CSU via HSI Domestic Operations, and the ICE BCC. Also, the issuing HSI SAC 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.
- 5) Title 19 TFO Authorities, Endorsements, and Restrictions: The HSI SAC may grant the Title 19 TFO one or more of the authorities denoted on the Designation Form. Use of these authorities shall be coordinated under the appropriate supervision of an HSI supervisor. All Full-Time and Part-Time Title 19 TFOs are assigned to HSI supervisors who manage the TFOs' activities and performance; all On-Call TFOs are assigned to HSI supervisors for coordination and accountability, while not directly in those HSI supervisors' chain of command.

The HSI supervisor will advise Title 19 TFOs that misuse or abuse of the authorities conveyed by their designation may result in the immediate withdrawal of the authority and that appropriate criminal, civil, or administrative actions may be taken.

- a) The Designation Form (ICE Form 73-001) sets forth authorities that the SAC may grant to a Title 19 TFO in Box 12. The TFO is granted only those authorities specifically selected on the Designation Form:

- i) 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.
  - ii) 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.
  - iii) 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.
  - iv) Perform other law enforcement duties which may be authorized under 19 U.S.C. § 1589a.
  - v) Make seizures of property in compliance with the Constitution of the United States and the Customs laws.
  - vi) 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.
  - vii) Other authorities as authorized (as delineated on the Designation Form).
- b) The Designation Form (ICE Form 73-001) sets forth endorsements and restrictions that the SAC may impose on the Title 19 TFO in Box 13. Only those endorsements and restrictions that are selected apply:
- i) This designation is INVALID without accompanying HSI identification and employing agency identification.
  - ii) The TFO shall follow the Interim ICE Use of Force Policy, dated July 7, 2004, or as updated or superseded.
  - iii) The TFO is not granted the authority to enforce administrative violations of immigration law.
  - iv) The TFO will present for inventory his or her HSI-issued credentials (and badge, if applicable) every 6 months, or upon request of his or her HSI supervisor.
  - v) 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 may otherwise be applied at the discretion of the HSI SAC.)

- vi) The TFO is authorized to fly armed while conducting official HSI business.
- vii) The TFO is authorized to operate a government-owned vehicle (GOV) in accordance with HSI policy.
- viii) Other endorsements and restrictions (as delineated on the Designation Form).

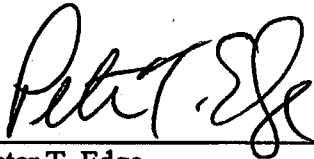
## **6. Recordkeeping.**

- 6.1. CSU will maintain and archive the results of the annual TFO Data Call(s).
- 6.2. **HSI Offices** will maintain the signed MOUs, the Designation Forms, the Customs Law written tests and results, and the Certification of Training for no less than 5 years from the TFO's separation, as a TFO, 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.
- 7.3. 19 U.S.C. § 1401(i).
- 7.4. 19 U.S.C. § 1589a.
- 7.5. 31 U.S.C. § 1344 (a)(9).
- 7.6. Federal Information Processing Standards Publication (FIPS) Pub 201-1, Personal Identify Verification (PIV) of Federal Employees and Contractors," dated March 2006, or as updated.
- 7.7. HSPD-12, "Policy for a Common Identification Standard for Federal Employees and Contractors," dated August 27, 2004.
- 7.8. 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.
- 7.9. DHS Sensitive Systems Policy Directive 4300A, Version 7.0., dated July 31, 2009, or as updated.
- 7.10. DHS Instruction Handbook 121-01-007, "The Department of Homeland Security Personnel Suitability and Security Program," dated June 18, 2009, or as updated.
- 7.11. ICE Delegation Order 04-006, "Authority for Designating Customs Officers within U.S. Immigration and Customs Enforcement," dated March 26, 2004, or as updated.

- 7.12. ICE Directive 3002.1, "ICE Badge and Credential Program," Attachment A, "Procedures for Reporting Lost/Stolen Law Enforcement Badges, DHS Seal Badges, and Credentials," of dated January 12, 2010, or as updated.
- 7.13. 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.
- 7.14. Interim ICE Use of Force Policy, dated July 7, 2004, or as updated or superseded.
- 8. **Attachments.**
  - 8.1. **Attachment A.** Template of HSI memorandum from the SAC to the Unit Chief, CSU, Certification of HSI TFO Cross-Training Course (Title 19).
  - 8.2. **Attachment B.** Template of HSI memorandum from the SAC to the Unit Chief, CSU, Identification for Title 19 Cross Designated Officer(s).
  - 8.3. **Attachment C.** Sample TFO Badge and Credential.
- 9. **No Private Right:** These guidelines and priorities are not intended to, do 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.



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Peter T. Edge  
Executive Associate Director  
Homeland Security Investigations



# Homeland Security

## Attachment A

MEMORANDUM FOR: [Name of Unit Chief]  
Unit Chief  
Contraband Smuggling Unit

THROUGH: [Name of Assistant Director]  
Assistant Director  
Domestic Operations

FROM: [Name of Special Agent in Charge]  
Special Agent in Charge  
[HSI Office]

SUBJECT: Certification of HSI TFO Cross-Designation Training Course (Title 19)

I certify that the Homeland Security Investigations (HSI) Task Force Officer (TFO) Course (TFO Course) was conducted by HSI [Name of city] in accordance with 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. The TFO Course was conducted from [Month Day, Year] through [Month Day, Year.]

***I certify that the instructors met the minimum qualifications for each block of training as mandated by HSI Directive 14-02.***

### Training Blocks and Instructors (Qualifications):

1. Introduction to HSI; Assistant Special Agent in Charge (ASAC) Jane Doe (TFO ASAC)
2. Customs Law; Becky Jones (Office of the Principal Legal Advisor Attorney)
3. Use of Force Policy and Flying Armed; Special Agent (SA) Paul Davis (Senior Firearms Instructor)
4. Integrity Awareness; SA Kristi Ryan (Office of Professional Responsibility)
5. Contraband/Narcotics/Border Enforcement Security Task Force (BEST); TFO Bob Doe (7 years BEST experience)
6. Gangs; Group Supervisor (GS) Jack Doe (Gang GS)
7. Human Smuggling/Human Trafficking; SA Brian Doe (6 years Human Smuggling experience)

Certification of HSI TFO Cross-Designation Training Course (Title 19)

Page 2

8. Firearms Smuggling/Counter Proliferation Investigations (CPI); GS Mike Doe (CPI Group Supervisor)
9. Commercial Fraud/Intellectual Property Rights (IPR); GS Laura Doe (IPR Group Supervisor)
10. Organized Crime Drug Enforcement Task Force (OCDETF); Jerry Doe (OCDETF Coordinator)
11. Financial; TFO Frank Doe (6 years Financial experience)
12. TECS/SEACATS/Data Systems; Intelligence Research Specialist Paul Doe (13 years Intelligence Research experience)
13. Confidential Informant (CI) Policy; SA Sandra Doe (Field CI Program Administrator)
14. Undercover Policy/Certified Undercover Operations (CUC); GS Anthony Doe (Financial Group/CUC)
15. Technical Operations; Kevin Doe (Technical Enforcement Officer)
16. Title III; SA Kelly Doe (Affiant of Title III Investigation)
17. Asset Sharing/State and Local Overtime (SLOT); GS Shawn Doe (Asset Identification and Removal Group)
18. HSI Forensic Laboratory; GS Nicholas Doe (Evidence Recovery Team)
19. Special Operations Unit; Program Manager Steve Doe (Special Operations Unit)

***I certify that the TFOs below attended and completed the full training.***

***I certify that all TFOs for whom Title 19 Cross-Designation is requested have completed the full training and successfully passed the test administered by the Office of the Principal Legal Advisor after the Customs Law training block.***

Task Force Officers (Name, Last 4 SSN, DOB, parent agency):

- |   |                           |
|---|---------------------------|
| 1. Bob Doe, 1111, 01/01/01, New York Police Department      | T-19 cross designated     |
| 2. Jack Doe, 1111, 02/02/02, County Police Department       | NOT T-19 cross designated |
| 3. Fred Doe, 1111, 03/03/03, U.S. Secret Service            | T-19 cross designated     |
| 4. Janet Doe, 1111, 04/04/04, New York Sheriff's Department | NOT T-19 cross designated |
| 5. Kate Doe, 1111, 05/05/05, New Jersey State Police        | T-19 cross designated     |



# Homeland Security

## Attachment B

MEMORANDUM FOR: [Name of Unit Chief]  
Unit Chief  
Contraband Smuggling Unit

THROUGH: [Name of Assistant Director]  
Assistant Director  
Domestic Operations

FROM: [Name of Special Agent in Charge]  
Special Agent in Charge  
[HSI Office]

SUBJECT: Identification for Title 19 Cross-Designated Officer(s)

Pursuant to 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, or as updated, HSI [enter city] is requesting Customs Officer Identification for the Task Force Officers (TFOs) listed below who have successfully completed the HSI TFO Course on [enter date] at the [enter venue], [enter city], [enter state]. Per HSI Directive 14-02, the Designation, Customs Officer (Excepted) (ICE Form 73-001) and the Memorandum of Understanding (ICE Form 73-002) have been completed.

Also, per HSI policy, a background check was conducted on the officers, including queries of TECS, the National Crime Information Center (NCIC), and the National Law Enforcement Telecommunications System (NLETS), and a letter of good standing was provided from the TFOs' parent agencies. Record checks were [positive or negative]. I understand that these checks do not clear the officers for Personal Identification Verification (PIV) cards or TECS access. Additionally, per HSI Directive 14-02, TFOs are required to obtain and regularly check a Department of Homeland Security e-mail account.

<u>TFO Name (Last 4 SSN)</u>	<u>Parent Agency</u>	<u>HSI Office</u>	<u>DHS E-mail</u>
John Doe (1234)	Trenton, NJ, PD	HSI Cherry Hill	John.doe@ice.dhs.gov
Rich Doe (2314)	Hoboken, NJ PD	HSI Newark	Rich.doe@ice.dhs.gov

Identification for Title 19 Cross-Designated Officer(s)

Page 2

HSI [enter city] understands that the TFO Coordinator and the Badge and Credential Coordinator will control and monitor the HSI TFOs' badges and/or credentials. The required forms and photographs have been e-mailed to the [HSITFO@ice.dhs.gov](mailto:HSITFO@ice.dhs.gov) mailbox in Outlook. If you have any questions regarding this request, please contact HSI [enter city], TFO Coordinator [enter name], at [enter phone number]. Thank you for your assistance.





**HOMELAND SECURITY  
INVESTIGATIONS**

**John Q Sample  
TASK FORCE OFFICER**



**T00000**

**[Picture]**

This certifies that the person whose name and photograph appear hereon has been designated as a Customs Officer pursuant to 19 U.S.C. 1401(i) and is authorized to enforce all Customs and related laws, conduct searches, make seizures and arrests, and perform other law enforcement duties authorized by law, all subject to any limitations and conditions annotated on his/her "Designation, Customs Officer" form.

**[Director's Signature]**

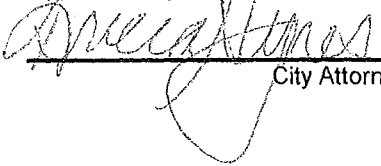
Assistant Secretary,  
U.S. Immigration and Customs Enforcement

Date Issued



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

Approved as to Form and Legality

  
City Attorney

2016 MAR 31 PM 4:52 OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

Introduced by Councilmember \_\_\_\_\_

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**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO ENTER INTO A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE DEPARTMENT OF HOMELAND SECURITY (DHS), OFFICE OF HOMELAND SECURITY INVESTIGATIONS (HSI) FOR THE PURPOSE OF ALLOWING PARTICULAR OAKLAND POLICE DEPARTMENT (OPD) OFFICERS TO BE DESIGNATED AS UNITED STATES CUSTOMS TITLE 19 TASK FORCE OFFICERS (TFOS), WITHOUT ADDITIONAL COMPENSATION, UNTIL THE EXPIRATION DATE OF THE AGREEMENT, UNLESS REVOKED AT AN EARLIER DATE BY EITHER OPD OR HSI**

**WHEREAS**, the Oakland Police Department (OPD) is committed to reducing crime and serving the community through fair, quality policing; and

**WHEREAS**, OPD officers and leadership are tasked with investigating many crimes including violent, gang-related and human trafficking crimes, due to the high level criminal activity that occurs each year in the City of Oakland; and

**WHEREAS**, many violent, gang-related and human trafficking crimes that occur each year in Oakland are connected to criminal groups whose networks bypass the geographic boundaries of Oakland and extend into other cities, states and even beyond the U.S. borders; and

**WHEREAS**, OPD can more effectively investigate such crimes when provided with additional resources and the sharing of data and technology; and

**WHEREAS**, HSI supports local agencies like OPD by collaborating in effective ways to create dramatically increased outcomes, otherwise known as a force multiplier approach, to investigations; and

**WHEREAS**, as part of that force multiplier collaborative approach, HSI is authorized under Title 19, section 1401 of the U.S. Code to cross-designate other federal, state and local law enforcement officers, henceforth known as Task Force Officers (TFO), to investigate and enforce customs laws; and

**WHEREAS**, OPD will benefit greatly from this partnership with DHS HSI because of the additional resources which will support OPD investigations of violent, gang-related and human trafficking crimes, including better forensics capabilities, a greater network for crime-related data sharing, and funding support through HSI's State Local Over Time (SLOT) funding for OPD officers to be paid for overtime hours; and

**WHEREAS**, OPD, in conjunction with officers working as TFOs, will be better placed to support federal prosecutions of violent, gang-related and human trafficking crimes through more successful criminal investigations; and

**WHEREAS**, only particular officers working in OPD's Criminal Investigations Division (CID) and involved in particular investigations, will each sign particular agreements for all provisions of this MOU, and will be designated as a Title 19 TFO and serve as a TFO without additional compensation, until the expiration date of the agreement unless revoked at an earlier date by either OPD or HSI; and

**WHEREAS**, all OPD officers designated by HSI as TFOs will first have to be trained so as to comply with firearms and other policing laws of different relevant jurisdictions, and be subject to guidelines and directives of HSI; and

**WHEREAS**, all training required by HSI of OPD officers serving as TFOs shall be conducted and paid for by HSI, at no cost whatsoever to OPD or the City of Oakland; and

**WHEREAS**, in accordance with 19 U.S.C. § 1589a, as Customs Officers, HSI Special Agents (SAs) and Title 19 TFOs are authorized to enforce the full range of federal offenses but HSI does not convey the authority to enforce administrative violations of immigration law; now, therefore, be it

**RESOLVED:** That the City Council authorizes the City Administrator or Designee to enter into a MOU with DHS/HSI for the purpose of allowing particular OPD officers to be designated as a United States Customs Title 19 TFO, without additional compensation, until the expiration date of the agreement unless revoked at an earlier date by either OPD or HSI; and be it

**FURTHER RESOLVED:** That the City Council authorizes the City Administrator or designee to accept and appropriate funds from HSI's SLOT funding to cover TFOs overtime cost for joint investigations; and be it

**FURTHER RESOLVED:** That the City Administrator, or designee, is authorized to conduct all negotiations, applications, agreements, and related actions which may be necessary to administer the aforementioned program.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

**MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN  
IMMIGRATION AND CUSTOMS ENFORCEMENT AND LOCAL,  
COUNTY, OR STATE LAW ENFORCEMENT AGENCY FOR THE  
REIMBURSEMENT OF JOINT OPERATIONS EXPENSES FROM  
THE TREASURY FORFEITURE FUND**

This Agreement is entered into by the Oakland Police Department (NCIC CODE #CA0010900) and Immigration and Customs Enforcement (ICE), SAC San Francisco for the purpose of the reimbursement of costs incurred by the Oakland Police Department in providing resources to joint operations/task forces.

Payments may be made to the extent they are included in the ICE Fiscal Year Plan, and the money is available within the Treasury Forfeiture Fund to satisfy the request(s) for the reimbursement of overtime expenses and other law enforcement expenses related to joint operations.

**I. LIFE OF THIS AGREEMENT**

This Agreement becomes effective on the date it is signed by both parties. It remains in force unless explicitly terminated, in writing, by either party.

**II. AUTHORITY**

This Agreement is established pursuant to the provisions of 31 USC 9703, the Treasury Forfeiture Fund Act of 1992, which provides for the reimbursement of certain expenses incurred by local, county, and state law enforcement agencies as participants of joint operations/task forces with a federal agency participating in the Treasury Forfeiture Fund.

**III. PURPOSE OF THIS AGREEMENT**

This Agreement establishes the responsibilities of both parties and the procedures for the reimbursement of certain overtime expenses and other law enforcement expenses pursuant to 31 USC 9703.

**IV. APPLICABILITY OF THIS AGREEMENT**

This agreement is valid for all joint investigations led by ICE SAC San Francisco, with the participation of the Oakland Police Department, and until terminated, in writing, by either party.

## V. TERMS, CONDITIONS, AND PROCEDURES

### A. Assignment of Officer(s)

To the maximum extent possible, the Oakland Police Department shall assign dedicated officers to any investigation or joint operation. Included as part of this Agreement, the Oakland Police Department shall provide the ICE SAC San Francisco with the names, titles, four last digits of SSNs, badge or ID numbers, and hourly overtime wages of the officer(s) assigned to the joint operation. This information must be updated as necessary.

### B. Submission of Requests for Reimbursement (Invoices) and Supporting Documentation

1. The Oakland Police Department may request the reimbursement of overtime salary expenses directly related to work on a joint operation with ICE SAC San Francisco, performed by its officer(s) assigned to this joint operation. In addition, the Oakland Police Department may request reimbursement of other investigative expenses, such as travel, fuel, training, equipment and other similar costs, incurred by officer(s) assigned as members of the designated joint operations with the ICE SAC San Francisco.

The Oakland Police Department may not request the reimbursement of the same expenses from any other Federal law enforcement agencies that may also be participating in the investigation.

2. Reimbursement payments will not be made by check. To receive reimbursement payments, the Oakland Police Department must ensure that Customs and Border Protection, National Finance Center (CBP/NFC) has a current ACH Form on file with the agency's bank account information, for the purposes of Electronic Funds Transfer. The ACH Form must be sent to the following address:

CBP National Finance Center  
Attn: Forfeiture Fund  
6650 Telecom Dr.  
Indianapolis, IN 46278

If any changes occur in the law enforcement agency's bank account information, a new ACH Form must be filled out and sent to the CBP/NFC as soon as possible.

3. In order to receive the reimbursement of officers' overtime and other expenses related to joint operations, the Oakland Police Department must submit to ICE SAC San Francisco the TEOAF Form "Local,

County, and State Law Enforcement Agency Request for Reimbursement of Joint Operations Expenses (Invoice)", signed by an authorized representative of that agency and accompanied by supporting documents such as copies of time sheets and receipts.

4. The Oakland Police Department remains fully responsible, as the employer of the officer(s) assigned to the investigation, for the payment of overtime salaries and related benefits such as tax withholdings, insurance coverage, and all other requirements under the law, regulation, ordinance, or contract, regardless of the reimbursable overtime charges incurred. ~~Treasury Forfeiture Fund reimburses overtime salaries. Benefits are not reimbursable.~~
5. The maximum reimbursement entitlement for overtime worked on behalf of the joint investigation is set at \$15,000 per officer per year.
6. The Oakland Police Department will submit all requests for the reimbursement of joint operations' expenses to ICE SAC San Francisco at the following address

Homeland Security Investigations  
630 Sansome Street, 12th Floor  
San Francisco, CA 94111

Questions can be directed to the case agent or the State/Local Coordinator, Toni Quon, at 415-844-5146 or at [toni.e.quon@ice.dhs.gov](mailto:toni.e.quon@ice.dhs.gov)

## VI. PROGRAM AUDIT

This Agreement and its provisions are subject to audit by ICE, the Department of the Treasury Office of Inspector General, the General Accounting Office, and other government designated auditors. The Oakland Police Department agrees to permit such audits and agrees to maintain all records relating to these transactions for a period not less than three years; and in the event of an on-going audit, until the audit is completed.

These audits may include reviews of any and all records, documents, reports, accounts, invoices, receipts of expenditures related to this agreement, as well as interviews of any and all personnel involved in these transactions.

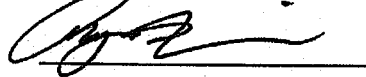
## VII. REVISIONS

The terms of this Agreement may be amended upon the written approval by both parties. The revision becomes effective on the date of approval.

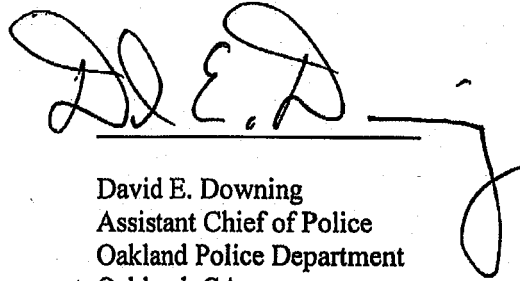
**VIII. NO PRIVATE RIGHT CREATED**

This is an internal government agreement between the ICE SAC San Francisco and the Oakland Police Department, and is not intended to confer any right or benefit to any private person or party.

**Signatures:**



Ryan Spradlin  
Special Agent in Charge  
Homeland Security Investigations  
U.S. Immigration and Customs Enforcement  
San Francisco, CA



David E. Downing  
Assistant Chief of Police  
Oakland Police Department  
Oakland, CA

Date: 1/8/17

Date: 1/5/17





# AUTOMATED REGIONAL INFORMATION EXCHANGE SYSTEM

A PUBLIC SAFETY DATA SHARING SERVICE PROVIDED BY CONTRA COSTA COUNTY

## **Contra Costa County**

Sheriff  
Antioch PD  
BART PD  
Brentwood PD  
Clayton PD  
Concord PD  
CCC Animal Services  
CCC College Dist PD  
CCC District Attorney  
CCC EHSD Fraud  
CCC Probation  
CCC Superior Court  
Danville PD  
EBRP District PD  
El Cerrito PD  
Hercules PD  
Kensington PD  
Lafayette PD  
Martinez PD  
Moraga PD  
Oakley PD  
Orinda PD  
Pinole PD  
Pittsburg PD  
Pleasant Hill PD  
Richmond PD  
San Pablo PD  
San Ramon PD  
Walnut Creek PD

## **Alameda County**

Sheriff  
Dublin PD  
Oakland PD

## **Solano County**

Sheriff  
Benicia PD  
Dixon PD  
Fairfield PD  
Rio Vista PD  
Suisun City PD  
Vacaville PD  
Vallejo PD

## **San Joaquin County**

Sheriff  
Escalon PD  
Lathrop PD  
Lodi PD  
Manteca PD  
Ripon PD  
Stockton PD  
Tracy PD

## **Santa Clara County**

Sheriff  
Sunnyvale PD

Dear Chief/Sheriff XXXXX,

As many of you are aware, ARIES is currently in the process of sharing the data contained within our East Bay Data Warehouse with the NCRIC. This data will then be shared with Coplink and California SmartJustice.

As part of this data sharing effort with California SmartJustice, an Interconnection Agreement must be signed by each Agency Head. This agreement is required for the agencies that are going to share data to Smart Justice thru ARIES and NCRIC. An agency user agreement is required for every agency who will be accessing the California SmartJustice system. The agency is required to sign on behalf of their users. This user agreement satisfies the legal and liability requirements for California SmartJustice. By agreeing to this, your agency will be granted access to the SmartJustice data sharing platform. A link to California SmartJustice will be available through ARIES.

During a recent ARIES Committee meeting, Department Representatives within the ARIES group approved the use of ARIES to be the conduit for sharing data with California SmartJustice, rather than each agency establishing its own connection.

As many of you know, California SmartJustice is a new criminal justice data sharing platform currently being offered by the California Attorney General's Office, Department of Justice.

Enclosed is the Interconnection Agreement along with signature page. I have also included a self-addressed envelope for your convenience. Once the agreement has been returned to me, I will ensure it is processed properly.

Sincerely,

Lieutenant Jason Vorhauer,  
Office of the Sheriff, Contra Costa County  
ARIES Manager



C A L I F O R N I A  
**SMARTJUSTICE**

# Interconnection Agreement

## Contents

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## 1 Purpose

This Interconnection Agreement (ICA) is entered into by and between the California Department of Justice (DOJ), and \_\_\_\_\_ (hereinafter referred to as "agency"), to define the relationship between DOJ and the agency as it relates to the sharing of data between DOJ and the agency.

## 2 Background

The public safety community is faced with the challenge of easily and accurately monitoring and tracking offender status, statewide. The passage of the Criminal Justice Realignment Act of 2011 (Chapter 15, Statutes of 2011 - Assembly Bill 109), has increased the necessity for data sharing between counties and among law enforcement and public safety agencies. These agencies need the ability to identify offenders returning to their jurisdictions and easily access complete offender profiles. Access to this data will enable agencies to effectively supervise individuals, measure outcomes of re-entry programs and offender services, and properly manage resources. Law enforcement officials who encounter these individuals must have access to up-to-date offender records and conditions of supervision, including information regarding alternative custody arrangements.

## 3 Definitions

1. All references to "agency" in this ICA shall be deemed a reference to "any agency."
2. All references to "instance" in this ICA shall be deemed a reference to the DOJ SmartJustice.
3. All references to "source agency" in this ICA shall be deemed a reference to the agency that contributed the information to the instance.

## 4 Responsibilities

1. To provide data to the maximum extent permitted by law, in a mutually agreed upon electronic format.
2. To contribute data and grant view-only access to the instance's participating agencies.
3. Such information may include, but is not limited to, record/case/jail management systems, Supervised Release File, Automated Criminal History System or other DOJ or agency owned information.
4. Compliance with the SmartJustice Policies, Practices and Procedures. For reference, see the following URL: <http://clew.doj.ca.gov/>

## 5 Information ownership and release

1. Ownership - Each contributing agency retains control of all information they provide through the instance at all times. An agency is responsible for creating, updating, and deleting records in its system according to its policies. An agency shall ensure the completeness and accuracy of its source data. The information contributed into the instance shall remain the property of the contributing agency.

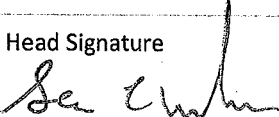
2. Referral of Information Requests from Third Parties - Any third party request for information authored or originated by another source agency shall be immediately referred to the source agency.
3. Prohibition Against Release of Information to Third Parties - The agency shall not release or make available any information it has accessed to any third party, unless they are the source agency, or as required by law.
4. Subpoenas and Court Orders - The agency may respond to a subpoena or court order for information authored or originated by another source agency after providing the source agency the opportunity to object. The agency shall immediately provide a copy of the subpoena or court order to the source agency.
5. State or Federal Public Record Requests - Upon receipt of a state or federal public record request for information authored or originated by another source agency the agency shall respond to the request by stating that the request will be referred to the source agency for response.

## 6 Term

This ICA may be terminated upon a 10 working day notice by either agency. In the event of a security incident that necessitates an immediate response, the 10 working day notice is not applicable.

## 7 Other

1. Should a conflict arise, the agency agrees to fully cooperate and provide all source documents, or other information necessary for investigation.
2. The parties agree this ICA is subject to all applicable federal, state, and local statutes, ordinances, and regulations.
3. An agency is authorized to download their own agency data from the instance.

Agency Head Signature 	Date 1-14-15
Agency Head (Printed) Sean Whent	
DOJ Signature	Date
DOJ (Printed)	



C A L I F O R N I A  
**SMARTJUSTICE**

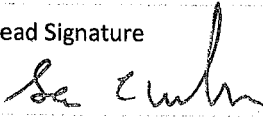
## **Agency User Agreement**

Agency Name
Agency ORI

Hereinafter referred to as the "subscriber," your agency agrees to conform to the California Department of Justice's (CalDOJ) SmartJustice Policies, Practices and Procedures (PPPs). Wherein SmartJustice information and images are classified as criminal offender record information (CORI), the subscriber agrees to conform to all CORI laws, regulations and policies. The subscriber additionally agrees to conform to all Cal-PHOTO Policies, Practices and Procedures. Accordingly, SmartJustice information and images are confidential and are to be used for law enforcement or criminal justice purposes only.

It is understood by the subscriber that violation of this Agency User Agreement may result in suspension or revocation of SmartJustice access, as deemed appropriate by the DOJ. In signing this Agency User Agreement, the subscriber is certifying that he/she is a regularly employed peace officer or other law enforcement or criminal justice agency representative. All SmartJustice users (i.e., computer operators, peace officers, investigators, analysts, agency management/supervisors, etc.) must be trained in the operation, policies, and procedures of SmartJustice. The subscriber understands that training can only be provided by DOJ's training staff, the SmartJustice Agency Coordinator (AC), or through the agency's own training program.

The CalDOJ, and/or the SmartJustice AC will perform audits on the use of the system and its records to ensure compliance with the SmartJustice PPPs. Periodic, unannounced site inspections may be performed by the CalDOJ to ensure compliance with the above.

Agency Head Signature 	Date 1-14-15
Agency Head (Printed) Sean Whelan	
DOJ Signature	Date
DOJ (Printed)	

## **THE SURVEILLANCE AND COMMUNITY SAFETY ORDINANCE**

**Whereas**, the City Council finds it is essential to have an informed public debate as early as possible about decisions related to surveillance technology; and

**Whereas**, the City Council finds that, while surveillance technology may threaten the privacy of all citizens, throughout history, surveillance efforts have been used to intimidate and oppress certain communities and groups more than others, including those that are defined by a common race, ethnicity, religion, national origin, income level, sexual orientation, or political perspective; and

**Whereas**, the City Council finds that surveillance technology may also be a valuable tool to bolster community safety and aid in the investigation and prosecution of crimes, while acknowledging the significance of protecting the privacy of citizens; and

**Whereas**, the City Council finds that surveillance technology includes not just technology capable of accessing non-public places or information (such as wiretaps) but also technology which aggregates publicly available information, because such information, in the aggregate or when pieced together with other information, has the potential to reveal a wealth of detail about a person's familial, political, professional, religious, or sexual associations; and

**Whereas**, the City Council finds that no decisions relating to surveillance technology should occur without strong consideration being given to the impact such technologies may have on civil rights and civil liberties, including those rights guaranteed by the California and United States Constitutions; and

**Whereas**, the City Council finds that any and all decisions regarding if and how surveillance technologies should be funded, acquired, or used should include meaningful public input and that public opinion should be given significant weight; and

**Whereas**, the City Council finds that legally enforceable safeguards, including robust transparency, oversight, and accountability measures, must be in place to protect civil rights and civil liberties before any surveillance technology is deployed; and

**Whereas**, the City Council finds that if a surveillance technology is approved, data reporting measures must be adopted that empower the City Council and public to verify that mandated civil rights and civil liberties safeguards have been strictly adhered to; now, therefore

### **THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

#### **Section 1. Title**

This ordinance shall be known as the Surveillance & Community Safety Ordinance.



## **Section 2. City Council Approval Requirement**

- 1) A City entity shall notify the Chair of the Privacy Advisory Commission prior to the entity:
  - a) Seeking or soliciting funds for surveillance technology, including but not limited to applying for a grant; or,
  - b) Soliciting proposals with a non-City entity to acquire, share or otherwise use surveillance technology or the information it provides.

Upon notification by the entity, the Chair shall place the item on the agenda at the next meeting for discussion and possible action. At this meeting, the entity shall inform the Privacy Advisory Commission of the need for the funds or equipment, or shall otherwise justify the action the entity intends to take. The Privacy Advisory Commission may vote its approval to proceed, object to the proposal, recommend that the entity modify its proposal, or take no action. Failure by the Privacy Advisory Commission to act shall not prohibit the entity from proceeding. Opposition to the action by the Privacy Advisory Commission shall not prohibit the entity from proceeding. The City entity is still bound by subsection (2) regardless of the action taken by the Privacy Advisory Commission under this subsection.

- 2) A City entity must obtain City Council approval, subsequent to a mandatory, properly-noticed, germane, public hearing prior to any of the following:
  - a) Accepting state or federal funds or in-kind or other donations for surveillance technology;
  - b) Acquiring new surveillance technology, including but not limited to procuring such technology without the exchange of monies or consideration;
  - c) Using new surveillance technology, or using existing surveillance technology for a purpose, in a manner or in a location not previously approved by the City Council; or
  - d) Entering into an agreement with a non-City entity to acquire, share or otherwise use surveillance technology or the information it provides
- 3) A City entity must obtain City Council approval of a Surveillance Use Policy prior to engaging in any of the activities described in subsection (2)(a)-(d).

## **Section 3. Information Required**

- 1) The City entity seeking approval under Section 2 shall submit to the City Council a Surveillance Impact Report and a proposed Surveillance Use Policy. A Surveillance Use Policy shall be considered a draft proposal until such time as it is approved pursuant to a vote of the City Council.
  - a) Prior to seeking City Council approval under Section 2, the City entity shall submit the Surveillance Impact Report and proposed Surveillance Use

Policy to the Privacy Advisory Commission for its review at a regularly noticed meeting.

- b) The Privacy Advisory Commission shall recommend that the City Council adopt, modify, or reject the proposed Surveillance Use Policy. If the Privacy Advisory Commission proposes that the Surveillance Use Policy be modified, the Privacy Advisory Commission shall propose modifications to the City entity and/or City Council in writing.
  - c) Failure by the Privacy Advisory Commission to make its recommendation on the item within 90 days of submission shall enable the City entity to proceed to the City Council for approval of the item.
- 2) After receiving the recommendation of the Privacy Advisory Commission, the City Council shall provide the public notice that will include the Surveillance Impact Report, proposed Surveillance Use Policy, and Privacy Advisory Commission recommendation at least fifteen (15) days prior to the public hearing.
  - 3) The City Council, or its appointed designee, shall continue to make the Surveillance Impact Report and Surveillance Use Policy, and updated versions thereof, available to the public as long as the municipal entity continues to utilize the surveillance technology in accordance with its request pursuant to Section 2(1).

#### **Section 4. Determination by City Council that Benefits Outweigh Costs and Concerns**

The City Council shall only approve any action described in Section 2, subsection (1) or Section 5 of this ordinance after first considering the recommendation of the Privacy Advisory Commission, and subsequently making a determination that the benefits to the community of the surveillance technology outweigh the costs; that the proposal will safeguard civil liberties and civil rights; and that, in the City Council's judgment, no alternative with a lesser economic cost or impact on civil rights or civil liberties would be as effective.

#### **Section 5. Compliance for Existing Surveillance Technology**

Each City entity possessing or using surveillance technology prior to the effective date of this ordinance shall submit a Surveillance Impact Report and a proposed Surveillance Use Policy for each surveillance technology, in compliance with Section 3 (1) (a-c).

- a) Prior to submitting the Surveillance Impact Report and proposed Surveillance Use Policy as described above, each City entity shall present to the Privacy Advisory Commission a list of surveillance technology already possessed or used by the City entity.
- b) The Privacy Advisory Commission shall rank the items in order of potential impact to civil liberties.
- c) Within sixty (60) days of the Privacy Advisory Commission's action in b), each City entity shall submit at least one (1) Surveillance Impact Report

and proposed Surveillance Use Policy per month to the Privacy Advisory Commission for review, beginning with the highest-ranking items as determined by the Privacy Advisory Commission, and continuing thereafter every month until the list is exhausted.

- d) Failure by the Privacy Advisory Commission to make its recommendation on any item within 90 days of submission shall enable the City entity to proceed to the City Council for approval of the item pursuant to Section 4. If such review and approval has not occurred within sixty (60) days of the City Council submission date, the City entity shall cease its use of the surveillance technology until such review and approval occurs.

### **Section 6. Oversight Following City Council Approval**

- 1) A City entity which obtained approval for the use of surveillance technology must submit a written Surveillance Report for each such surveillance technology to the City Council within twelve (12) months of City Council approval and annually thereafter on or before November 1.
  - a) Prior to submission of the Surveillance Report to the City Council, the City entity shall submit the Surveillance Report to the Privacy Advisory Commission for its review.
  - b) The Privacy Advisory Commission shall recommend to the City Council that the benefits to the community of the surveillance technology outweigh the costs and that civil liberties and civil rights are safeguarded; that use of the surveillance technology cease; or propose modifications to the Surveillance Use Policy that will resolve the concerns.
- 2) Based upon information provided in the Surveillance Report and after considering the recommendation of the Privacy Advisory Commission, the City Council shall determine whether the requirements of Section 4 are still satisfied. If the requirements of Section 4 are not satisfied, the City Council shall direct that use of the surveillance technology cease and/or require modifications to the Surveillance Use Policy that will resolve any deficiencies.
- 3) No later than January 15 of each year, the City Council shall hold a public meeting and publicly release in print and online a report that includes, for the prior year:
  - a) A summary of all requests for City Council approval pursuant to Section 2 or Section 5 and the pertinent Privacy Advisory Commission recommendation, including whether the City Council approved or rejected the proposal and/or required changes to a proposed Surveillance Use Policy before approval; and
  - b) All Surveillance Reports submitted.

## Section 7. Definitions

The following definitions apply to this Ordinance:

- 1) "Surveillance Report" means a written report concerning a specific surveillance technology that includes all the following:
  - a) A description of how the surveillance technology was used, including the type and quantity of data gathered or analyzed by the technology;
  - b) Whether and how often data acquired through the use of the surveillance technology was shared with outside entities, the name of any recipient entity, the type(s) of data disclosed, under what legal standard(s) the information was disclosed, and the justification for the disclosure(s);
  - c) Where applicable, a breakdown of what physical objects the surveillance technology software was installed upon; for surveillance technology software, a breakdown of what data sources the surveillance technology was applied to;
  - d) Where applicable, a breakdown of where the surveillance technology was deployed geographically, by individual census tract as defined in the relevant year by the United States Census Bureau;
  - e) A summary of community complaints or concerns about the surveillance technology, and an analysis of any discriminatory uses of the technology and effects on the public's civil rights and civil liberties, including but not limited to those guaranteed by the California and Federal Constitutions;
  - f) The results of any internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response;
  - g) Information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response;
  - h) Information, including crime statistics, that help the community assess whether the surveillance technology has been effective at achieving its identified purposes;
  - i) Statistics and information about public records act requests, including response rates;
  - j) Total annual costs for the surveillance technology, including personnel and other ongoing costs, and what source of funding will fund the technology in the coming year; and
  - k) Any requested modifications to the Surveillance Use Policy and a detailed basis for the request.
- 2) "City entity" means any department, bureau, division, or unit of the City of Oakland.
- 3) "Surveillance technology" means any electronic device, system utilizing an electronic device, or similar used, designed, or primarily intended to collect, retain, analyze, process, or share audio, electronic, visual, location, thermal,

olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group.

- a) "Surveillance technology" does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a surveillance technology as defined in Section 7(3): (a) routine office hardware, such as televisions, computers, and printers, that is in widespread public use and will not be used for any surveillance or law enforcement functions; (b) Parking Ticket Devices (PTDs); (c) manually-operated, non-wearable, handheld digital cameras, audio recorders, and video recorders that are not designed to be used surreptitiously and whose functionality is limited to manually capturing and manually downloading video and/or audio recordings; (d) surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles; (e) manually-operated technological devices used primarily for internal municipal entity communications and are not designed to surreptitiously collect surveillance data, such as radios and email systems; (f) municipal agency databases that do not contain any data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by surveillance technology.
- 4) "Surveillance Impact Report" means a publicly-released written report including at a minimum the following:
  - a) **Description:** Information describing the surveillance technology and how it works, including product descriptions from manufacturers;
  - b) **Purpose:** Information on the proposed purposes(s) for the surveillance technology;
  - c) **Location:** The location(s) it may be deployed and crime statistics for any location(s);
  - d) **Impact:** An assessment identifying any potential impact on civil liberties and civil rights including but not limited to potential disparate or adverse impacts on any communities or groups if the surveillance technology was used or deployed, intentionally or inadvertently, in a manner that is discriminatory, viewpoint-based, or biased via algorithm;
  - e) **Mitigations:** Identify specific, affirmative technical and procedural measures that will be implemented to safeguard the public from each such impacts;
  - f) **Data Types and Sources:** A list of all types and sources of data to be collected, analyzed, or processed by the surveillance technology, including "open source" data, scores, reports, logic or algorithm used, and any additional information derived therefrom;
  - g) **Data Security:** Information about the steps that will be taken to ensure that adequate security measures are used to safeguard the data collected or generated by the technology from unauthorized access or disclosure;

- h) **Fiscal Cost:** The fiscal costs for the surveillance technology, including initial purchase, personnel and other ongoing costs, and any current or potential sources of funding;
  - i) **Third Party Dependence:** Whether use or maintenance of the technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis;
  - j) **Alternatives:** A summary of all alternative methods (whether involving the use of a new technology or not) considered before deciding to use the proposed surveillance technology, including the costs and benefits associated with each alternative and an explanation of the reasons why each alternative is inadequate; and,
  - k) **Track Record:** A summary of the experience (if any) other entities, especially government entities, have had with the proposed technology, including, if available, quantitative information about the effectiveness of the proposed technology in achieving its stated purpose in other jurisdictions, and any known adverse information about the technology (such as unanticipated costs, failures, or civil rights and civil liberties abuses).
- 5) "Surveillance Use Policy" means a publicly-released and legally-enforceable policy for use of the surveillance technology that at a minimum specifies the following:
- a) **Purpose:** The specific purpose(s) that the surveillance technology is intended to advance;
  - b) **Authorized Use:** The specific uses that are authorized, and the rules and processes required prior to such use;
  - c) **Data Collection:** The information that can be collected by the surveillance technology. Where applicable, list any data sources the technology will rely upon, including "open source" data;
  - d) **Data Access:** The individuals who can access or use the collected information, and the rules and processes required prior to access or use of the information;
  - e) **Data Protection:** The safeguards that protect information from unauthorized access, including encryption and access control mechanisms;
  - f) **Data Retention:** The time period, if any, for which information collected by the surveillance technology will be routinely retained, the reason such retention period is appropriate to further the purpose(s), the process by which the information is regularly deleted after that period lapses, and the specific conditions that must be met to retain information beyond that period;
  - g) **Public Access:** How collected information can be accessed or used by members of the public, including criminal defendants;

- h) **Third Party Data Sharing:** If and how other City or non-City entities can access or use the information, including any required justification or legal standard necessary to do so and any obligations imposed on the recipient of the information;
- i) **Training:** The training required for any individual authorized to use the surveillance technology or to access information collected by the surveillance technology, including any training materials;
- j) **Auditing and Oversight:** The mechanisms to ensure that the Surveillance Use Policy is followed, including internal personnel assigned to ensure compliance with the policy, internal recordkeeping of the use of the technology or access to information collected by the technology, technical measures to monitor for misuse, any independent person or entity with oversight authority, and the legally enforceable sanctions for violations of the policy; and
- k) **Maintenance:** The mechanisms and procedures to ensure that the security and integrity of the surveillance technology and collected information will be maintained.

## Section 8. Enforcement

- 1) Any violation of Resolution No. 85638 (DAC Surveillance Use Policy adopted June 2, 2015), Resolution No. 85807 (FLIR Surveillance Use Policy adopted October 6, 2015), Resolution No. ~~xxxxx~~ 86505 (Cell Site Simulator Use Policy adopted ~~xxxxxx~~ February 7, 2017), this Ordinance, or of a Surveillance Use Policy promulgated under this Ordinance, constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this Ordinance. An action instituted under this paragraph shall be brought against the respective city agency, the City of Oakland, and, if necessary to effectuate compliance with this Ordinance or a Surveillance Use Policy (including to expunge information unlawfully collected, retained, or shared thereunder), any third-party with possession, custody, or control of data subject to this Ordinance.
- ~~2) Any person who has been subjected to a surveillance technology in violation of this Ordinance, or about whom information has been obtained, retained, accessed, shared, or used in violation of this Ordinance or of a Surveillance Use Policy promulgated under this Ordinance, may institute proceedings in any court of competent jurisdiction against any person who committed such violation and shall be entitled to recover actual damages (but not less than liquidated damages of \$1,000 or \$100 per day for each day of violation, whichever is greater) and punitive damages.~~
- 2) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought under paragraphs (1) ~~or (2)~~.
- 3) Any violation committed by a City employee of Resolution No. 85638 (DAC Surveillance Use Policy adopted June 2, 2015), Resolution No. 85807 (FLIR

Surveillance Use Policy adopted October 6, 2015), Resolution No. ~~xxxxx~~86505 (Cell Site Simulator Use Policy adopted ~~xxxxxx~~February 7, 2017), this Ordinance, or of a Surveillance Use Policy promulgated under this Ordinance, shall result in consequences that may include but are not limited to retraining, counseling, written reprimand, suspension, and/or termination of City employment.

- ~~4) In addition, for a willful, intentional, or reckless violation of this Ordinance or of a Surveillance Use Policy promulgated under this Ordinance, an individual shall be deemed guilty of a misdemeanor and may be punished by a fine not exceeding \$1,000 per violation.~~

## **Section 9. Secrecy of Surveillance Technology**

It shall be unlawful for the City of Oakland or any municipal entity to enter into any contract or other agreement that conflicts with the provisions of this Ordinance, and any conflicting provisions in such contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable. Conflicting provisions in contracts or agreements signed prior to the enactment of this Ordinance shall be deemed void and legally unenforceable to the extent permitted by law. This section shall not apply to collective bargaining agreements and related memorandums of agreement or understanding that pre-date this Ordinance.

## **Section 10. Whistleblower Protections.**

1) Neither the City nor anyone acting on behalf of the City may take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment, including but not limited to discriminating with respect to compensation, terms and conditions of employment, access to information, restrictions on due process rights, or civil or criminal liability, because:

a) The employee or applicant was perceived to, about to, or assisted in any lawful disclosure of information concerning the funding, acquisition, or use of a surveillance technology or surveillance data to any relevant municipal agency, municipal law enforcement, prosecutorial, or investigatory office, or City Council Member, based upon a good faith belief that the disclosure evidenced a violation of this Ordinance; or

b) The employee or applicant was perceived to, about to, or assisted or participated in any proceeding or action to carry out the purposes of this Ordinance.

2) It shall be grounds for disciplinary action for a City employee or anyone else acting on behalf of the City to retaliate against another City employee or applicant who makes a good-faith complaint that there has been a failure to comply with any part of this Ordinance.

3) Any employee or applicant who is injured by a violation of Section 10 may institute a proceeding for monetary damages and injunctive relief against the City in any court of competent jurisdiction.



### **Section 11. Severability**

The provisions in this Ordinance are severable. If any part of provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

### **Section 12. Construction**

The provisions of this Ordinance, including the terms defined in Section 7, are to be construed broadly so as to effectuate the purposes of this Ordinance.

### **Section 13. Effective Date**

This Ordinance shall take effect on [DATE].

DRAFT