

# **U.S. CUSTOMS AND BORDER PROTECTION**

## **DIRECTIVE NUMBER:**

3840-001

## **DIRECTIVE TITLE:**

CBP Responses to Certain Crimes, Incidents, & Imminent Life-Threatening Emergencies & Federal, State, Local Tribal & Territorial Support Requests

## **EFFECTIVE DATE:**

July 2024



**U.S. Customs and  
Border Protection**

## **What are Freedom of Information Act (FOIA) “Exemptions”?**

Not all information within records is required to be released under the FOIA. Congress established nine exemptions from disclosure for certain categories of information to protect against certain harms, such as an invasion of personal privacy, or harm to law enforcement investigations. The FOIA authorizes agencies to withhold information falling under these categories when an agency reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions as described below.

### **Exemption 1**

**Classified Information:** Information specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such executive order.

### **Exemption 2**

**Personnel Rules and Practices:** Information related solely to the internal personnel rules/practices of an agency.

### **Exemption 3**

**Information Exempted by Statute:** Information specifically exempted from disclosure by statute if that statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or establishes particular criteria for withholding or refers to particular types of matters to be withheld; and if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to 5 U.S.C. § 552(b)(3).

### **Exemption 4**

**Trade Secrets and Confidential Commercial Information:** Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

### **Exemption 5**

**Privileged Information:** Inter-agency or intra-Agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency, provided the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

### **Exemption 6**

**Personal Information:** Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

### **Exemption 7**

**Certain Law Enforcement Information:** Records or information compiled for law enforcement purposes (but only to the extent that the production of such law enforcement records/information) that:

**7(A)** Could reasonably be expected to interfere with enforcement proceedings.

**7(B)** Would deprive a person of a right to a fair trial/impartial adjudication.

**7(C)** Could reasonably be expected to constitute an unwarranted invasion of personal privacy.

**7(D)** Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a law enforcement authority in the course of a criminal investigation execution of a lawful national security intelligence investigation, information furnished by a confidential source.

**7(E)** Would disclose techniques and procedures for law enforcement investigations/prosecutions or would disclose guidelines for law enforcement investigations/prosecutions if such disclosure reasonably risked circumvention of the law.

**7(F)** Could reasonably be expected to endanger the life or physical safety of any individual.

### **Exemption 8**

**Information About Financial Institutions:** Information contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

### **Exemption 9**

**Information About Wells:** Geological or geophysical information and data, including maps, concerning wells.

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*Additional descriptions and examples of each FOIA Exemption Category above can be found at:*  
<https://www.dhs.gov/foia-exemptions>

**U.S. DEPARTMENT OF HOMELAND SECURITY**  
**U.S. Customs and Border Protection**

**CBP DIRECTIVE NO. 3840-001**

**EFFECTIVE DATE: July 2024**

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**ORIGINATING OFFICE: OC-PD**  
**SUPERSEDES: See Section 3**  
**REVIEW DATE: July 2027**

**U.S. Customs and Border Protection Law Enforcement Responses to Certain Crimes, Incidents, and Imminent Life-Threatening Emergencies and Federal, State, Local, Tribal and Territorial Support Requests**

- 1. PURPOSE.** This directive sets forth the actions U.S. Customs and Border Protection (CBP) Law Enforcement Personnel are expected to take, or may take, depending upon the situation, in relation to certain crimes, incidents, and Imminent Life-Threatening Emergencies that occur in their presence or immediate vicinity. It also provides guidance on whether, and under what circumstances, CBP Law Enforcement Personnel may provide Law Enforcement Support in response to requests from Federal, State, Local, Tribal, and Territorial (FSLTT) law enforcement partners.
- 2. BACKGROUND.** CBP is the largest law enforcement agency in the United States and holds a considerable footprint in communities ranging from rural border towns to metropolitan areas. CBP regularly works alongside FSLTT law enforcement partners. Instances of collaboration with these partners in direct support of CBP's border security mission and in response to Imminent Life-Threatening Emergencies will receive priority consideration. Collaboration in matters outside of CBP's enduring mission priorities must be carefully evaluated to ensure compliance with Federal law.

Legacy policies from the Immigration and Naturalization Service (INS) and the U.S. Customs Service (*The Law of Arrest, Search & Seizure Manual (M-69)* and the *Customs Officers Responding to State Crimes Directive*) provide limited guidance to CBP Law Enforcement Personnel responding to requests for assistance from FSLTT law enforcement partners. This directive supersedes those legacy policies, (1) sets forth the actions on-duty CBP Law Enforcement Personnel are expected to take, or may take, depending upon the situation, in relation to certain crimes, incidents, and Imminent Life-Threatening Emergencies that occur in their presence or immediate vicinity, (2) explains when off-duty CBP Law Enforcement may respond to certain crimes, incidents, and Imminent Life-Threatening Emergencies in their presence or immediate vicinity in a Federal law enforcement capacity and (3) identifies the types of Law Enforcement Support that CBP may provide FSLTT partners as well as the Department of Homeland Security (DHS) or CBP approval required to provide such support.

In the event of litigation, the Department of Justice (DOJ) will ultimately determine, in evaluating requests for representation on a case-by-case basis under 28 C.F.R. § 50.15, whether CBP Law Enforcement Personnel acted within the scope of their employment and whether representation is in the interest of the United States. CBP will advocate that DOJ find all CBP Law Enforcement Personnel who act in an objectively reasonable manner, and consistent with the provisions of this directive, to be acting within the scope of their employment and warranting Federal representation.

**3. SCOPE.** This directive is applicable to all CBP employees, including CBP Law Enforcement Personnel. This directive supersedes the *Customs Officers Responding to State Crimes Directive* (4510-016A), Chapter VI of *The Law of Arrest, Search and Seizure Manual (INS Document M-69)*, and CBP Interim Policy, *Interim Guidance Regarding CBP Support SLTT Law Enforcement Entities Related to First Amendment Protest Activities*, dated June 2021.

**4. POLICY.**

**4.1. CBP Law Enforcement Personnel Response to Certain Incidents, Crimes, and Imminent-Life Threatening Emergencies That Occur in Their Presence or Immediate Vicinity.**

4.1.1. On-Duty CBP Law Enforcement Personnel must abide by Sections 4.2 – 4.2.4 when taking reasonable law enforcement action, to the extent consistent with Federal or state law, in response to certain incidents, crimes, and Imminent-Life Threatening Emergencies that occur in their presence or immediate vicinity.

4.1.2. Off-Duty CBP Law Enforcement Personnel are neither required nor expected to take law enforcement action. However, Off-Duty CBP Law Enforcement Personnel are authorized to take reasonable law enforcement action, as detailed in Sections 4.3 – 4.3.4, to the extent consistent with Federal or state law, in response to certain incidents, crimes, and Imminent-Life Threatening Emergencies that occur in their presence or immediate vicinity.

4.1.3. CBP Law Enforcement Personnel, whether on or off-duty, should be cognizant of the risks of intervening in a non-Federal criminal offense. Any law enforcement action taken in response to a non-Federal criminal offense pursuant to Sections 4.2.2 – 4.2.4 and 4.3.2 – 4.3.4 must be in accordance with state law via peace officer status, citizen's arrest authority, or other applicable state law authority. Additionally, as with any litigation arising out of intervention in a criminal offense, DOJ makes the determination as to whether legal representation is appropriate based on whether the employee is acting within the scope of their employment and whether representation is in the interest of the United States.

4.1.4. All CBP Law Enforcement Personnel who respond pursuant to Sections 4.2 – 4.3 are expected to identify themselves as law enforcement officers as soon as possible, accounting for the exigency of the situation, coordinate with other law enforcement agencies with jurisdiction as applicable, and notify an on-duty supervisor as soon as possible of their response to appraise them of the circumstances and, if on-duty, obtain approval for further engagement.

**4.2. On-Duty CBP Law Enforcement Personnel Authorized Actions in Response to Certain Incidents, Crimes, and Imminent Life-Threatening Emergencies That Occur in Their Presence or Immediate Vicinity.**

4.2.1. On-Duty CBP Law Enforcement Personnel have the authority to arrest, and are expected to arrest, any individual(s) who commits a Federal criminal offense in their presence, including, but not limited to, assault on a Federal law enforcement officer engaged in the performance of official duties (18 U.S.C. § 111), acts of violence at international airports (18 U.S.C. § 37), assault on Federal property or land (18 U.S.C. § 113), and destruction of Federal property (18 U.S.C. § 1361).

4.2.2. On-Duty CBP Law Enforcement Personnel may take reasonable law enforcement action, to the extent consistent with Federal or state law, to respond to a Crime of Violence that occurs in their presence or immediate vicinity, regardless of whether the underlying

offense is Federal or state, and coordinate with the law enforcement agency with jurisdiction regarding the disposition of any arrested suspect(s).

4.2.3. On-Duty CBP Law Enforcement Personnel who are requested by an FSLTT law enforcement officer in their presence or immediate vicinity to provide emergency assistance or aid in an FSLTT law enforcement action may do so in an objectively reasonable manner to the extent such actions do not interfere with CBP mission priorities and are otherwise consistent with and in furtherance of that Federal or state law.

4.2.4. On-Duty CBP Law Enforcement Personnel who, because of their geographic proximity to an Imminent Life-Threatening Emergency, know or have an articulable reason to believe they can respond before any other law enforcement officer, may respond and take reasonable law enforcement action, to the extent consistent with Federal or state law, to protect human life.

4.3. Off-Duty CBP Law Enforcement Personnel Authorized Actions in Response to Certain Incidents, Crimes, and Imminent Life-Threatening Emergencies That Occur in Their Presence or Immediate Vicinity.

4.3.1. Off-Duty CBP Law Enforcement Personnel may arrest any individual(s) who commit a Federal criminal offense in their presence, including, but not limited to, assault on a Federal law enforcement officer engaged in the performance of official duties (18 U.S.C. § 111), violence at international airports (18 U.S.C. § 37), assault on Federal property or land (18 U.S.C. § 113), and destruction of Federal property (18 U.S.C. § 1361).

4.3.2. Off-Duty CBP Law Enforcement Personnel may take reasonable law enforcement action, to the extent consistent with Federal or state law, to respond to a Crime of Violence that occurs in their presence or immediate vicinity, regardless of whether the underlying offense is Federal or state, and coordinate with the law enforcement agency with jurisdiction regarding the disposition of any arrested suspect(s).

4.3.3. Off-Duty CBP Law Enforcement Personnel who are requested by an FSLTT law Enforcement officer in their presence or immediate vicinity to provide emergency assistance or aid in an FSLTT law enforcement action may do so in an objectively reasonable manner that is consistent with and in furtherance of that Federal or state law.

4.3.4. Off-Duty CBP Law Enforcement Personnel who, because of their geographic proximity to an Imminent Life-Threatening Emergency, know or have reason to believe they can respond before any other law enforcement officer, may respond and take reasonable law enforcement action, to the extent consistent with Federal or state law, to protect human life.

4.4. CBP Law Enforcement Support to FSLTT Law Enforcement Partners.

4.4.1. It is the Policy of CBP to provide Law Enforcement Support to FSLTT law enforcement partners upon request, when operationally feasible, to the extent there is (1) Federal authority to provide such support or (2) the underlying law enforcement action(s) is authorized under Federal or state law. Requests for CBP Law Enforcement Support in furtherance of CBP mission priorities and in response to Imminent Life-Threatening Emergencies will receive priority consideration. The approvals required to provide CBP Law Enforcement Support are described in Section 8.

5. **AUTHORITIES/REFERENCES.**

- 5.1 5 U.S.C. § 3341, *Details; within Executive or Military Departments.*
- 5.2 5 U.S.C. Subchapter VI, *Assignments to and From States.*
- 5.3 6 U.S.C. § 124n, *Protection of certain Facilities and Assets from Unmanned Aircraft.*
- 5.4 6 U.S.C. § 211, *Establishment of U.S. Customs and Border Protection.*
- 5.5 8 U.S.C. § 1357, *Powers of Immigration Officers and Employees.*
- 5.6 10 U.S.C. § 723, *Support of Federal Authorities in Response to Civil Disturbances.*
- 5.7 18 U.S.C § 16, *Crime of Violence Defined.*
- 5.8 18 U.S.C. § 37, *Violence at International Airports.*
- 5.9 18 U.S.C. § 111, *Assaulting, Resisting, or Impeding certain Officers or Employees.*
- 5.10 18 U.S.C. § 113, *Assaults within Maritime and Territorial Jurisdiction.*
- 5.11 18 U.S.C. § 1361, *Government Property or Contracts.*
- 5.12 18 U.S.C. § 3056, *Powers, Authorities, and Duties of the United States Secret Service.*
- 5.13 19 U.S.C. § 1589a, *Enforcement Authority of Customs Officers.*
- 5.14 28 U.S.C. § 2671 (Notes), *Law Enforcement Officer Acting Within Scope of Office or Employment.*
- 5.15 28 C.F.R. § 50.15, *Representation of Federal officials and employees by Department of Justice attorneys or by private counsel furnished by the Department in civil, criminal, and congressional proceedings in which Federal employees are sued, subpoenaed, or charged in their individual capacities.*
- 5.16 31 U.S.C. § 1301, *Purpose Act.*
- 5.17 31 U.S.C. § 1341, *Anti-Deficiency Act.*
- 5.18 40 U.S.C. § 1315, *Law Enforcement Authority of Secretary of Homeland Security for Protection of Public Property.*
- 5.19 42 U.S.C. § 5121 – 5207, *Stafford Act.*
- 5.20 41 C.F.R. Subpart C – *Conduct on Federal Property.*
- 5.21 *Further Consolidated Appropriations Act, 2024*, div. C, tit. II, U.S. Customs and Border Protection, Operations and Support (and any relevant future Appropriations Act).
- 5.22 Executive Order No. 13175, *Consultation and Coordination with Indian Tribal Governments*, dated November 6, 2000.
- 5.23 Department of Justice *State and Local Deputation of Federal Law Enforcement Officers During Stafford Act Deployments*, 36 Op. O.L.C. 77, 2012 WL 1123840 March 2012.

- 5.24 Department of Justice, *Federal Bureau of Investigation – Statutory Jurisdiction – Authority of Agents Concerning Non-Federal Offenses*, 2 Op. O.L.C. 47, 1978 WL 15263, dated February 1978.
- 5.25 Homeland Security Presidential Directive 5, *Management of Domestic Incidents*, dated February 28, 2003.
- 5.26 Presidential Policy Directive 22, *National Special Security Events*, dated March 28, 2013
- 5.27 DHS Directive No. 252-11, *Office for State and Local Law Enforcement*, dated June 9, 2009.
- 5.28 DHS Policy Guidance, *Counter Unmanned Aircraft Systems*, dated September 10, 2019.
- 5.29 DHS Policy Memo, *First Amendment Protected Activities*, dated May 17, 2019.
- 5.30 DHS Policy Memo, *Federal Designation and Deputation Requirements*, dated March 4, 2022.
- 5.31 CBP Policy Memo, *Secretary Approval Required to Accept Designation and Deputation Requests from Law Enforcement Partners*, dated February 1, 2024.
- 5.32 CBP Directive 3340-025F, *Reporting Significant Incidents*, dated November 2, 2021.
- 5.33 CBP *Counter Unmanned Aircraft Systems Handbook*, dated February. 2, 2021
- 5.34 CBP Publication No. 4500-002A, *CBP Use of Force Policy*, dated January 2021.
- 5.35 CBP Order 23-003, *Customs Officer and Immigration Officer Authority Designations and Delegations*, April 20, 2023.
- 5.36 CBP Handbook No. 4500-002B, *CBP Use of Force - Administrative Guidelines and Procedures Handbook*, dated January 2021.

## 6. DEFINITIONS.

6.1 **CBP Law Enforcement Personnel:** For the purposes of this directive, CBP employees who have been designated with customs and immigration officer authority pursuant to CBP Order 23-003, *Customs Officer and Immigration Officer Authority Designations and Delegations*, April 20, 2023, or a successor policy, are authorized to exercise that authority as Federal law enforcement officers. This includes, but is not limited to, CBP Officers, Border Patrol Agents, Air Interdiction Agents, Aviation Enforcement Agents, Marine Interdiction Agents, Office of Professional Responsibility Special Agents, and CBP law enforcement officers in the Office of Intelligence, Law Enforcement Safety and Compliance, and Office of Training and Development.

6.2 **Crime of Violence:** As stated in 18 U.S.C. § 16, a Federal or state criminal offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

6.3 **Imminent Life-Threatening Emergency:** A life-threatening situation, such as an active shooter incident, that requires an immediate law enforcement life-saving response. An imminent life-threatening emergency does not include general state crime enforcement, including crowd control or public safety efforts, unless circumstances change, and such situations become articulable, life-threatening emergencies.

6.4 Law Enforcement Support: For purposes of this directive, the deployment of CBP Law Enforcement Personnel or other CBP resources, such as air and marine support, to address a law enforcement incident. The provision of CBP equipment, such as aircraft, vehicles, or munitions for use by FSLTT law enforcement partners is prohibited unless authorized by the Commissioner upon consultation with the Associate Chief Counsel for Enforcement and Operations and the Associate Chief Counsel for Trade and Finance.

## 7. RESPONSIBILITIES.

### 7.1 CBP, Commissioner/Deputy Commissioner and/or Commissioner's Designee.

7.1.1 Review and approve or deny requests, as required by Section 8, for CBP to provide Law Enforcement Support to FSLTT law enforcement partners.

### 7.2 CBP Executive Assistant Commissioners, U.S. Border Patrol Chief, and Assistant Commissioners.

7.2.1 Ensure that the provisions and requirements outlined in this directive are effectively implemented across their component office.

### 7.3 CBP, Office of Public Affairs (OPA).

7.3.1 Review FSLTT requests for CBP Law Enforcement Support and identify requests that are reasonably anticipated to generate media attention or involve First Amendment activities.

7.3.2 Submit post-review recommendations to the Office of the Commissioner via email at  
[REDACTED] (b) (2)

### 7.4 CBP, Office of Chief Counsel.

7.4.1 Provide legal advice and legal training to CBP Law Enforcement Personnel as requested.

7.4.2 Provide legal advice and guidance, as required by Section 8.7.1 and 8.7.2, in relation to interagency agreements with Federal law enforcement partners and CBP Law Enforcement Support to SLTT law enforcement partners.

7.4.3 Conduct legal review of FSLTT requests referred by CBP Operational Offices and provide legal guidance.

### 7.5 CBP, Operations Support-CBP WATCH.

7.5.1 Review all approved Law Enforcement Support requests for events known or reasonably anticipated to involve First Amendment activities and route Significant Incident Reports (SIR) to senior CBP leadership as appropriate.

7.5.2 Coordinate with the DHS National Operations Center to adjudicate pertinent Departmental or DHS Component requests for information and assistance as warranted.

7.5.3 Coordinate National Special Security Events (NSSE) and/or Special Event Assessment Rating (SEAR) event-related planning and operations with support and execution from



pertinent CBP offices, including but not limited to activation of and support to CBP Lead Field Coordinator as warranted.

7.5.4 Assist with the process required to designate or deputize CBP Law Enforcement Personnel with additional FSLTT law enforcement authority as required by Section 8 and in accordance with the Secretary's memorandum of March 4, 2022, titled *Federal Designation and Deputation Requirements* as well as the requirements of CBP Policy Memo, *Secretary Approval Required to Accept Designation and Deputation Requests from Law Enforcement Partners*, dated February 1, 2024.

## 7.6 CBP, Operational Offices.

7.6.1 Intake/review Law Enforcement Support requests from FSLTT law enforcement partners.

7.6.2 Determine the appropriate approval authority pursuant to Section 8 and the established office procedures. Consult with the Office of Chief Counsel as necessary regarding any legal questions about this directive.

7.6.3 Route the request to the next review official or approval authority utilizing the appropriate branch, sector, or regional/headquarters (HQ) chain of command.

7.6.4 Provide the requested Law Enforcement Support (for approved requests) consistent with all applicable laws, regulations, and policies.

7.6.5 Develop an after-action report for CBP and Operational Office leadership following the completion of support and enter that after-action report into the system of record.

7.6.6 Conduct, in coordination with the Office of Chief Counsel, training for CBP Law Enforcement Personnel about this directive and the relevant authorities, approval requirements, and procedures required to respond to FSLTT requests for CBP Law Enforcement Support.

## 7.7 CBP Law Enforcement Personnel.

7.7.1 Adhere to the authorities, responsibilities and procedures that apply to exercising law enforcement authority under this directive.

## 8. PROCEDURES.

### CBP Law Enforcement Support to FSLTT Law Enforcement Partners

8.1 CBP Law Enforcement Support that Furthers the CBP Border Security Mission, including Joint Task Forces (JTF) and Other Cooperative Agreements.

8.1.1 On-duty CBP supervisors may approve CBP Law Enforcement Support to FSLTT law enforcement partners if there is an articulable basis to conclude the provision of that support furthers the CBP border security mission.

8.1.2 CBP Law Enforcement Personnel may be members of FSLTT JTFs or other cooperative agreements that further the CBP border security mission and act consistent with the purpose and mission of the JTF.

- 8.1.3 In this context, law enforcement authority is limited to Federal arrest authority and authority provided by state law, such as peace officer status and citizen arrest authority, if applicable.
- 8.1.4 CBP Law Enforcement Personnel that require additional law enforcement authority in the form or designation or deputation must abide by CBP Policy Memo, *Secretary Approval Required to Accept Designation and Deputation Requests from Law Enforcement Partners*, dated February 1, 2024, and when required, submit a memorandum and supporting documentation to the Secretary, through the Commissioner and their chain of command, and must receive written authorization from the Secretary prior to accepting such designation or deputation.
- 8.2 CBP Law Enforcement Support in the Context of Emergency Support Function (ESF) Deployments, NSSE, and SEAR Events.
- 8.2.1 CBP is authorized to provide support in the context of Federal ESF deployments and NSSE and SEAR events and must abide by all existing procedures and approval requirements.
- 8.2.2 In this context, law enforcement authority is limited to Federal arrest authority and authority provided by state law, such as peace officer status and citizen arrest authority, if applicable.
- 8.2.3 With regard to any law enforcement authority requirements in the context of this type of support, this directive does not alter or limit the execution of authorities related to NSSE, SEAR events, and National Response Framework Mission Assignment Deployments. Any designation or deputation requirements must follow those processes.
- 8.3 CBP Law Enforcement Support in the Context of FPS Law Enforcement Operations.
- 8.3.1 The Secretary, Director, Federal Protective Service (FPS), and Commissioner may approve cross-designation of CBP Law Enforcement Personnel pursuant to 40 U.S.C. § 1315(b)(1) when necessary for the protection of property owned or occupied by the Federal Government and persons on the property, including duty in areas outside the property to the extent necessary to protect the persons and property on the property.
- 8.3.2 This cross-designation provides CBP Law Enforcement Personnel authority to assist FPS in their mission to protect Federal property and enforce violations of the Federal regulations relating to conduct on Federal property, such as failure to abide by an officer's lawful direction.
- 8.4 CBP Law Enforcement Air and Marine Support in Relation to DHS Mission Priorities.
- 8.4.1 On-duty CBP supervisors may approve requests for FSLTT air and marine support in relation to DHS mission priorities, including, but not limited to, border security missions, ESF deployments, and NSSE and SEAR events.
- 8.4.2 Consistent with the DHS Counter-Unmanned Aircraft Systems (C-UAS) Policy, the CBP C-UAS Handbook, and 6 U.S.C. § 124n, the Secretary must designate a covered facility or asset in an approved operations plan for CBP to utilize C-UAS technology and resources in relation to DHS mission priorities.
- 8.5 CBP Law Enforcement Air and Marine Support in Relation to Other FSLTT Requests.

8.5.1 The Secretary, or the appropriate delegated official, must approve requests for FSLTT air and marine support where there is no nexus to the DHS mission and no Imminent Life-Threatening Emergency, as defined in Section 6.3.

8.6 CBP Law Enforcement Support in the Context of an Imminent Life-Threatening Emergency that Does Not Occur in the Presence or Immediate Vicinity of CBP Law Enforcement Personnel.

8.6.1 CBP Law Enforcement Personnel who, because of their geographic proximity to an Imminent Life-Threatening Emergency, know or have reason to believe they can respond before any other law enforcement officer, may, consistent with Sections 4.2.4 and 4.3.4, respond and take reasonable law enforcement action, to the extent consistent with Federal or state law, to protect human life. Section 8.6 addresses FSLTT requests for CBP Law Enforcement Support in relation to Imminent Life-Threatening Emergencies that *do not* occur in the presence or immediate vicinity of CBP Law Enforcement Personnel and would require CBP Law Enforcement Personnel to travel to respond.

8.6.2 On-duty CBP supervisors may approve FSLTT requests for CBP Law Enforcement Support pursuant to Section 8.6. Approval of such requests should, be based on (1) a request from a FSLTT law enforcement partner identifying a specific need for CBP Law Enforcement Support, explaining in sufficient detail the type of CBP Law Enforcement Support requested, identifying the lead law enforcement agency with jurisdiction assuming command and control, and confirming that CBP Law Enforcement Support will not be duplicative of other responding agencies, and (2) a determination that the requested support can be provided in a timely manner so as to save lives. Supervisors shall not authorize CBP Law Enforcement Personnel to respond unless both conditions are met.

8.6.3 Whenever CBP Law Enforcement Support is provided pursuant to Section 8.6, CBP will follow National Incident Management System (NIMS) and Incident Command System (ICS) principles to ensure its response fits within the coordinated effort. CBP Law Enforcement Support pursuant to Section 8.6 is limited to that necessary to resolve the emergency.

8.7 CBP Law Enforcement Support to FSLTT Partners In All Other Contexts.

8.7.1 On-duty supervisors may approve requests from Federal law enforcement partners for CBP Law Enforcement Support. On-duty CBP supervisors should consult with the Office of Chief Counsel as soon as possible to determine if an interagency agreement is necessary to provide such support. On-duty CBP supervisors should be aware that interagency assistance may require reimbursement, depending on the context.

8.7.2 To the extent there is a request by an SLTT law enforcement partner for support that is not captured by Section 8.1 – 8.6 such requests must be approved by the Commissioner following consultation with the Associate Chief Counsel for Enforcement and Operations and the Associate Chief Counsel for Trade and Finance to ensure that such support can be provided consistent with Federal law.

8.7.3 Nothing in this Section prohibits, restricts, or impacts the ability of CBP Law Enforcement Personnel to serve on details or assignments with FSLTT law enforcement partners pursuant to 5 U.S.C. § 3341 or 5 U.S.C. § Subchapter VI.

8.8 Commissioner or Secretary Approval Procedures.

8.8.1 When Section 8 CBP Law Enforcement Support requests require approval from the Commissioner or Secretary, the Operational Office which receives the request will transmit it via (b) (7)(E) through the office's EAC or Chief, to the Commissioner. The Deputy Commissioner, the EAC for Operations Support (OS), and the CBP WATCH will be copied on all such transmissions, in addition to other leadership as the Commissioner may require.

8.8.2 The Commissioner will review the FSLTT Law Enforcement Support request and the Operational Office's recommendation in consultation with the Office of Chief Counsel as appropriate, or as required pursuant to Section 8.

8.8.3 The Commissioner will approve or deny the request and communicate the decision directly to the Operational Office that originally received the request, with a courtesy copy for awareness to all other impacted (operational and support) CBP offices.

8.8.4 When Secretary approval is required pursuant to Section 8, the Commissioner or his/her designee will then coordinate with DHS as appropriate.

### Reporting Requirements

8.9 CBP Law Enforcement Personnel shall report all actions taken pursuant to Section 4.2 – 4.3 and 8.1 – 8.7 consistent with guidelines established in the Commissioner's Situation Room Reporting directive, the *CBP Use of Force Policy, Guidelines and Procedures Handbook*, and other CBP policy.

8.10 In addition to the reporting requirements identified in Section 8.9, within 48 hours of providing CBP Law Enforcement Support to FSLTT law enforcement partners pursuant to Section 8.1 – 8.7, the Operational Office that originally received the FSLTT support request will draft and submit an after-action report to the Office of the Commissioner that includes:

8.10.1 The name of the FSLTT entity that requested Law Enforcement Support.

8.10.2 The purpose for which the support was requested.

8.10.3 The number of Law Enforcement Personnel and asset categories/quantity requested.

8.10.4 The duration of the requested support.

8.10.5 The official who approved the support request.

8.10.6 Dates and description of the support provided.

8.10.7 Estimated cost of support provided.

8.10.8 Overview of media coverage to include commentary laudatory or critical of CBP involvement in the event.

### Legal Representation

8.11 DOJ may provide legal representation to present or former CBP employees sued, subpoenaed, or charged in a personal capacity for actions taken within the scope of their employment, provided that doing so is determined by DOJ to be in the interest of the United States.

8.12 This representation is discretionary and is contingent upon DOJ's determination the employee's actions giving rise to the suit (1) reasonably appear to have been performed within the scope of their employment, and (2) that it is in the best interest of the United States to provide the requested legal representation.

8.13 While DOJ determinations are final regarding requests for legal representation, CBP will advocate that DOJ represent all CBP Law Enforcement Personnel who act in an objectively reasonable manner and consistent with the provisions of this directive.

## 9. RECORDS MANAGEMENT.

9.1. (TBD If applicable).

10. **POINT OF CONTACT.** Direct all policy compliance questions, applications, requests, and/or complaints or reporting to (b) (2).

11. **NO PRIVATE RIGHTS CREATED.** This document is an internal policy statement of CBP and does not create or confer any rights, privileges, or benefits for any person or party.

**JUL 03 2024**

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Troy A. Miller Date  
Senior Official Performing the Duties of the Commissioner  
U.S. Customs and Border Protection

### Attachments:

- DHS Policy Memo, *Federal Designation and Deputation Requirements*, dated March 4, 2022
- CBP Policy Memo, *Secretary Approval Required to Accept Designation and Deputation Requests from Law Enforcement Partners*, dated February 1, 2024
- CBP Interim Policy, *Interim Guidance Regarding CBP Support SLTT Law Enforcement Entities Related to First Amendment Protest Activities*, dated June 8, 2021