



*Forging a New Legacy*

**Homeland Security  
Investigations Interviewing Training Program  
HSI Academy**

# Homeland Security Investigations (HSI)

## Terminal Performance Objective

Given simulated Homeland Security Investigations scenarios, conduct an interview after planning, in a manner that complies with the 5<sup>th</sup> amendment, the HSI Interviewing Handbook, and is necessary for managing human behavior in law enforcement situations

# Homeland Security Investigations (HSI)

## Enabling Objectives (1 of 2)

- Explain the different interview types and discuss interviewing planning and considerations  
Demonstrate documentation of interviews and summarize the HSI custodial recording policy  
Discuss advanced rapport strategies and techniques  
Demonstrate

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# Homeland Security Investigations (HSI)

## Enabling Objectives (2 of 2)

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# Review of the Past

CITP  
Lecture  
Labs

Previous LE  
experience

HSI legal  
lessons for  
conducting  
interviews



# Homeland Security Investigations (HSI)

## Main Ideas

- Special Agents will conduct investigative interviews to solicit information to further an investigation  
Information has a high probability of being used in a judicial proceeding  
Interviews may involve subjects of the investigation, witnesses, informants, victims  
Methods, techniques, and theories to use when conducting investigative or informational interviews

# Homeland Security Investigations (HSI)

## Agenda

- Types of interviews and planning considerations  
Documentation of interviews and HSI custodial recording policy  
Advanced rapport strategies and techniques (b)(7)(E)  
interviewing  
Confrontational interviewing  
Interviewing informants  
Use of interpreters in interviews

# Homeland Security Investigations (HSI)

## Types of Interviews

Victim

Witness

Suspect

Informant





# Homeland Security Investigations (HSI)

## Types of Interviews

- Victim –

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# Homeland Security Investigations (HSI)

## Planning for Interviews (1 of 5)

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# Homeland Security Investigations (HSI)

## Planning for Interviews (2 of 5)

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# Homeland Security Investigations (HSI)

## Planning for Interviews (3 of 5)

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## Planning for Interviews (4 of 5)

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# Homeland Security Investigations (HSI)

## Planning – Interviewing Juveniles (5 of 5)

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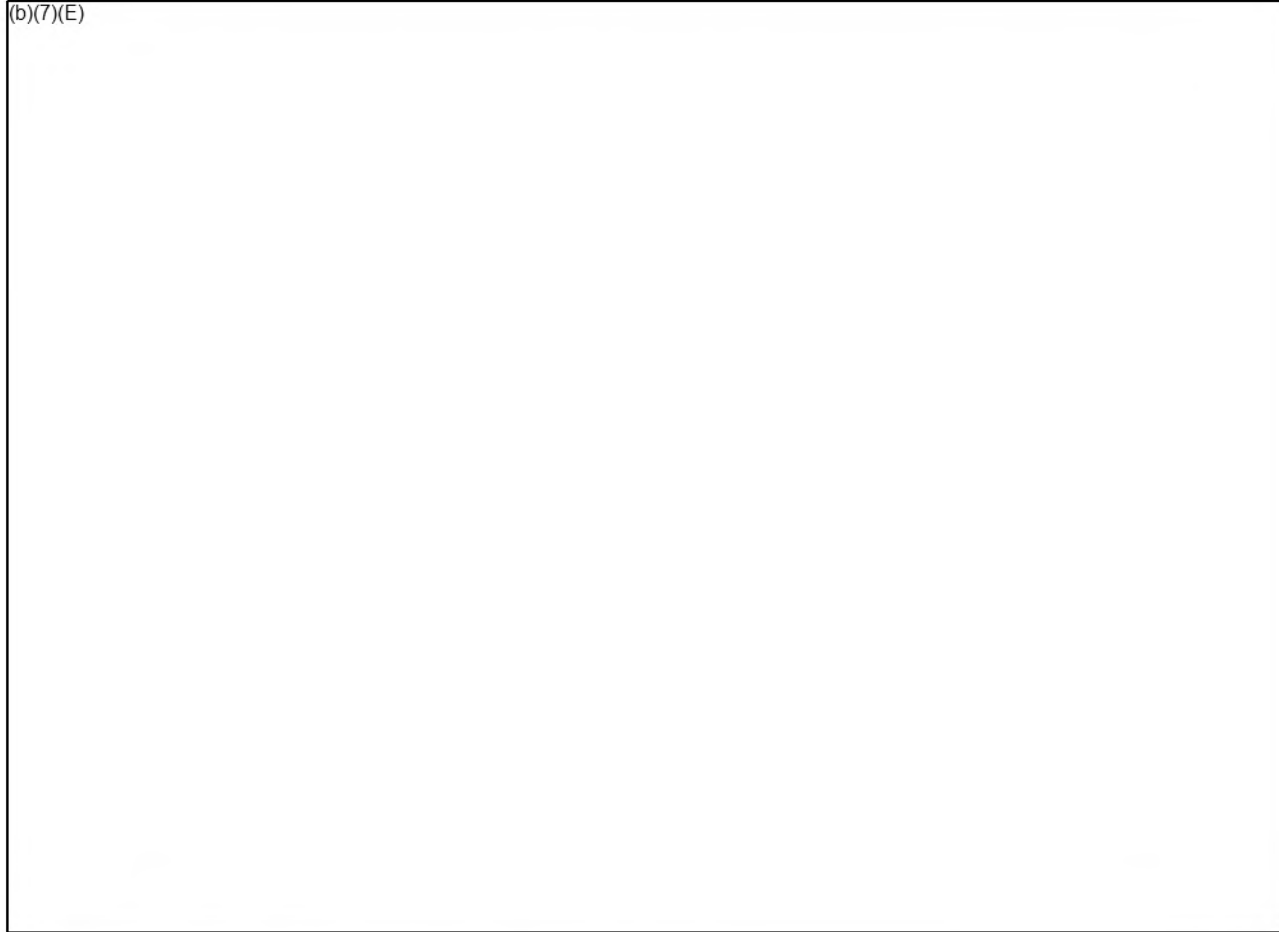
## Establish Optimal Interview Strategy

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## Game Plan the Interview (1 of 2)

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# Homeland Security Investigations (HSI)

## Game Plan the Interview (2 of 2)

Logistics

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Potential  
Obstacles

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# Homeland Security Investigations (HSI)

## Interview Style

- Numerous approaches and ad hoc modifications may be necessary – tailor to:

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# Homeland Security Investigations (HSI)

## Law Enforcement Interview

### Five Step Law Enforcement Interview

#### Victim/Witness\*

1. Introduction
2. Rapport
3. Questioning  

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4. Summary
5. Close

\*Provide Victim/Witness pamphlet as appropriate.

#### Suspect

1. Introduction
2. Rapport
3. Questioning  

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4. Summary
5. Close



# Homeland Security Investigations (HSI)

## The Interview – Introduction Phase

- Introduce self, partner, and agency  
Display credentials  
Identify interviewee  
State purpose of interview

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## The Interview – Rapport Phase

- Used throughout interview –

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## The Interview – Questioning Phase

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## Question Type – Biographical

Establish DOB, residential, employment, and contact information

Establish any other unique identifiers, if possible

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## Questioning Techniques

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# Homeland Security Investigations (HSI)

## The Interview – Summary Phase

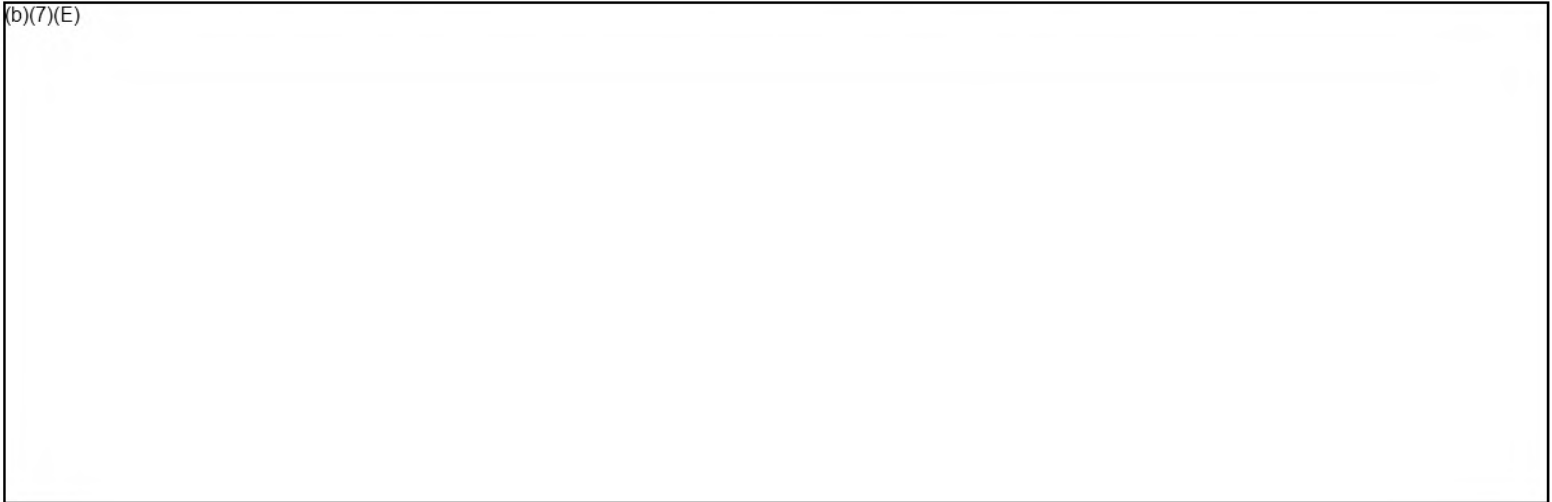
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# Homeland Security Investigations (HSI)

## The Interview – Closing Phase

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# Homeland Security Investigations (HSI)

## Documentation of Interviews

- Interview notes must be sufficient for legal use Best strategies for note taking:

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Policy – when possible, record interviews Recordings of interviews are

evidence

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## Documentation of Interviews (cont'd)

- Take clear and concise notes

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## Notes – Document Lies

- Memorialize untruthful/mistaken accounts – disclosure involves exculpatory materials even if interviewee “corrects” Document lie – even if interviewee subsequently tells the truth: Lie Reason for lie

# Homeland Security Investigations (HSI)

## Basic Precepts: Interview Notes / Documentation

- Tools to build a case  
Facilitate preparation of report  
Notes to be understandable  
shorthand and abbreviations prohibited  
notes must be kept  
Interview notes are DISCOVERABLE  
Preservation/retention of notes

Full information in the  
Interviewing  
Techniques Handbook



# Homeland Security Investigations (HSI)

## Advisement of Rights

- Miranda warnings – procedural safeguards HSI policy and legal considerations: use Statement of Rights – ICE Form 73-025 – when advising of rights under 5th Amendment and when completing a written statement Administrative warnings No right against self-incrimination – questioning must remain in administrative realm 8 CFR 287: Administrative Warnings for Civil Removal

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# Homeland Security Investigations (HSI)

## Signed Statements

- May be necessary at any time during investigation Always carry copies of Statement of Rights forms Document admissions and confessions with a written and signed statement If unable to obtain statement, maintain detailed notes about the substance of relevant information When additional information is inappropriate to include, document pertinent information not included in the statement Preparation – planning phase is very important SAs should be familiar with case and elements to cover

# Homeland Security Investigations (HSI)

## Interview Documentation

- Formatting –

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Full information in the  
Interviewing  
Techniques Handbook

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# Homeland Security Investigations (HSI)

## Electronic Recordings of Interviews

- During custodial interviews Can be made covertly or overtly Preference: video/audio recording Preambles: what to capture objections to recording Avoid stopping recording Concluding the recording

Full information in the Interviewing Techniques Handbook

# Homeland Security Investigations (HSI)

## Electronic Recordings of Interviews

- During non-custodial interviews May record at own discretion unless prohibited by local policy Follow p for custodial interview Subject to same handling policies and procedures and custodial interview Concluding the recording Recorded statements pursuant to a summons or subpoena

Full information in the  
Interviewing  
Techniques Handbook



# Homeland Security Investigations (HSI)

## Rapport Building

- Rapport – vital to successful interviews  
Definition: harmonious, empathetic, relation, connection, accord or affinity to another

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## Rapport Fundamentals

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## Rapport Building Fundamentals (cont'd)

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## Methods for Building and Maintaining Rapport

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# Homeland Security Investigations (HSI)

## Build/Strengthen Rapport –

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# Homeland Security Investigations (HSI)

## Build/Strengthen Rapport –

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# Homeland Security Investigations (HSI)

## Build/Strengthen Rapport –

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# Homeland Security Investigations (HSI)

## Build/Strengthen Rapport –

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# Homeland Security Investigations (HSI)

## Establishing and Maintaining Control (1 of 4)

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# Homeland Security Investigations (HSI)

## Rapport and Custodial Interviews

- Miranda warnings must be presented prior to questioning

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# Homeland Security Investigations (HSI)

## Develop Rapport with Resistant Interviewee

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# Homeland Security Investigations (HSI)

## Techniques to Improve Effectiveness on Interview

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# Homeland Security Investigations (HSI)

## Countering Questions from Victims and Witnesses

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## Confrontational Interviewing Skills

Confrontational interviewing defined

Key precepts of confrontational suspect interviews

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# Homeland Security Investigations (HSI)

## Confrontational Interviewing Defined

*An interview in which the interviewee, most frequently a suspect in a criminal investigation, is positively confronted with information, evidence and declarative statements regarding the investigation by the interviewer, that are designed to elicit admissions concerning his/her criminal culpability. Commonly referred to as “interrogation” when involving a criminal suspect. Can be used in other interviews as well when the elicitation of additional information is desirable and deception is suspected.*

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# Homeland Security Investigations (HSI)

## Countering Questions from Victims and Witnesses

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# Homeland Security Investigations (HSI)

## Countering Questions from Victims and Witnesses

- Majority of suspects only confess when they strongly believe they are already caught Previous studies has identified “perception of proof” as the strongest catalyst to suspect confession

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# Homeland Security Investigations (HSI)

## Theories and Methods of Interrogations

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# Homeland Security Investigations (HSI)

## Informant Interviewing Skills

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## Informant Interviewing Skills (cont'd)

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# Homeland Security Investigations (HSI)

## Informant Interviewing Skills (cont'd)

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# Homeland Security Investigations (HSI)

## Use of an Interpreter in Interviews

*Ascertaining the need for an interpreter Consider when individual to be questioned is a non-native English speaker Consider need for an interpreter to conduct interview in in interviewee's native*

*language.*

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*Document use of interpreter and language used in interview ROI*

# Homeland Security Investigations (HSI)

## The Role of an Interpreter

- Subordinate to interviewer – passive and impartial  
Translate, word for word, what both parties say  
No clarification  
No explanation of questions and answers  
Never distract the interviewee – in any way  
Sit: Beside the interviewer or Between, and to the side of, the parties



# Homeland Security Investigations (HSI)

## Preparing an Interpreter

- Review methods and procedures of this interview  
Interpreter is a conduit of information  
No conversation other than interviewer's words  
Translate information without altering meaning  
Translate exact question/response  
Mimic interviewer's voice inflection and gestures  
No editing of any part of interview, no matter how trivial the remark  
Interviewer – Use clear, concise, simply-stated, jargon-free questions

# Homeland Security Investigations (HSI)

## Documenting Interpreter Effectiveness

- Interviewee and Interpreter understand each other  
Specific language and dialect used  
Interviewee/Interpreter understanding advised at beginning to tell interviewer if the problems exist with interpretation  
Repeated confirmation of mutual understanding  
Potential problems with using interpreters  
Easy to miss shades of meaning  
If necessary – interviewer may substitute another interpreter during interview

# Homeland Security Investigations (HSI)

## Demonstration – Interview Planning

- Review the scenario case facts Walk students through an interview planning and strategy using (b)(7)(E)

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# Homeland Security Investigations (HSI)

## Summary

- Interviews – conversations conducted to obtain information  
Proficiency – increases reliability of interview outcomes  
Interviews test SAs' resourcefulness and personality – establishing rapport while uncovering relevant information  
Interviewers can use (b)(7)(E)  
(b)(7)(E) Documentation from interviews is evidence



Protecting the Borders Against Illicit Trade, Travel, and Finance



**Forging a New Legacy**

# **Homeland Security Investigations**

Introduction to Investigative Planning

HSI Special Agent Training

**ICE Academy**

# Homeland Security Investigations (HSI)

## Terminal Performance Objective

...d fact  
...ntify the  
...oints of  
...n supporting  
prosecution of the case in accordance with  
HSI policies and guidelines





# Homeland Security Investigations (HSI)

## Enabling Performance Objectives

Select an investigative strategy based on preliminary information and describe the priorities in developing an appropriate investigative plan

Explain the purpose and benefits of conducting parallel investigations

Identify the need for collateral investigations and/or investigative referrals

# Homeland Security Investigations (HSI)

## Enabling Performance Objectives (Cont'd)

Describe the types of investigative information and assistance available from various federal and state law enforcement agencies and organizations

Describe open source databases and electronic and physical sources of information and the potential problems associated with their use in an investigation

Identify legal requirements associated with open source research

# Homeland Security Investigations (HSI)

## Enabling Performance Objectives (Cont'd)

Select an investigative method to collect evidence and information in support of an investigative plan and case strategy

Select the appropriate subpoena, summons, or search warrant for the collection and analysis of documentary and physical evidence in an investigation

# Homeland Security Investigations (HSI)

## Review of the past– During CITP

Practiced a number  
of investigative  
techniques

Studied  
documentation and  
report writing

Learned about the  
search warrants

Applied techniques  
during labs and the  
continuing case  
scenario

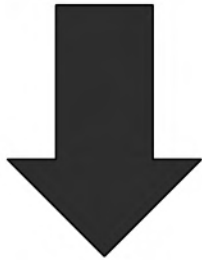
Trained in federal  
criminal law

# Homeland Security Investigations (HSI)

## Main Idea Scenario

Read the brief scenario

The Scenario is in your student guide



Discuss issues the scenario presents

Discuss investigative techniques you would use



# Homeland Security Investigations (HSI)

## Agenda

Investigative priorities and strategies

Parallel and collateral investigations

DHS automated systems

Information/assistance from various federal and state law enforcement agencies and organizations

Open source databases

Electronic and physical sources of information

# Homeland Security Investigations (HSI)

## Agenda (Cont'd)

Legal requirements of open source research

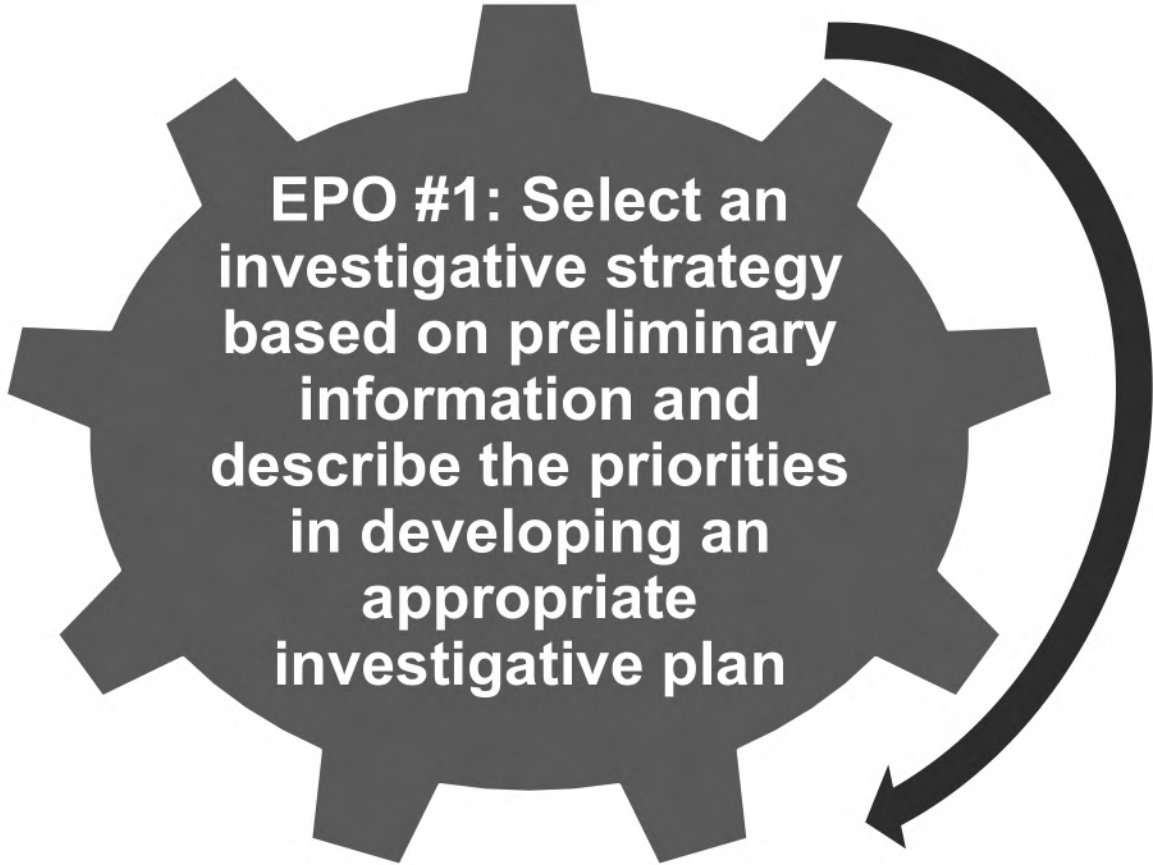
Investigative methods to collect evidence and information

Subpoenas, summons, and search warrants

Demonstration

Student practice

# Homeland Security Investigations (HSI)



**EPO #1: Select an investigative strategy based on preliminary information and describe the priorities in developing an appropriate investigative plan**



# Homeland Security Investigations (HSI)

## Investigations can originate from various sources

Anonymous sources

Unsolicited letters sent to DHS

Walk-in reporting by concerned citizens

Referrals from other DHS entities

Referrals from other agencies – federal, state, local

Confidential Informants

Spinoff cases

# Homeland Security Investigations (HSI)

## Initial Information

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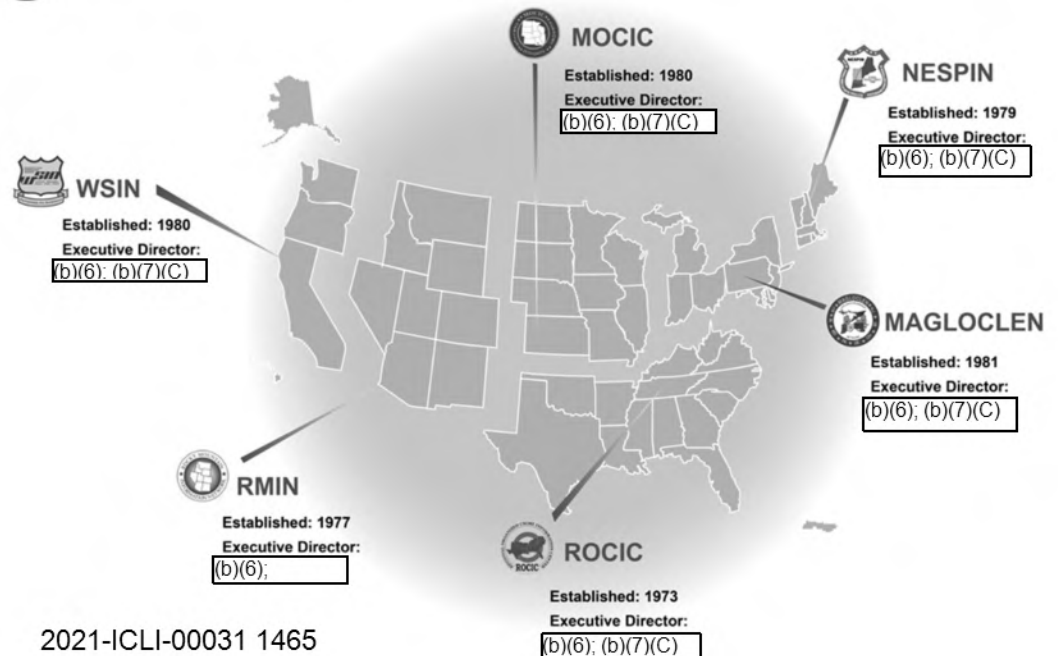
# Homeland Security Investigations (HSI)

## Notification and Deconfliction Requirements

- Existing MOUs/MOAs / Cross-agency jurisdictionDeconfliction of concurrent enforcement activityDICE, JTTF, HIDTA, OCDETF, etc.Local task forcesLocal deconfliction centers (RISS)



Regional Information Sharing Systems (RISS) Program



# Homeland Security Investigations (HSI)

## Analyze Initial Information to Determine



# Homeland Security Investigations (HSI)

## Analyze Initial Information to Determine (Cont'd)

HSI jurisdiction

National and local priorities

*What jurisdictional or local/national priorities could impact a potential investigation?*

# Homeland Security Investigations (HSI)

## Development of the Investigative Plan

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# Homeland Security Investigations (HSI)

## Additional Planning Issues

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# Homeland Security Investigations (HSI)

## Logistical Planning Issues

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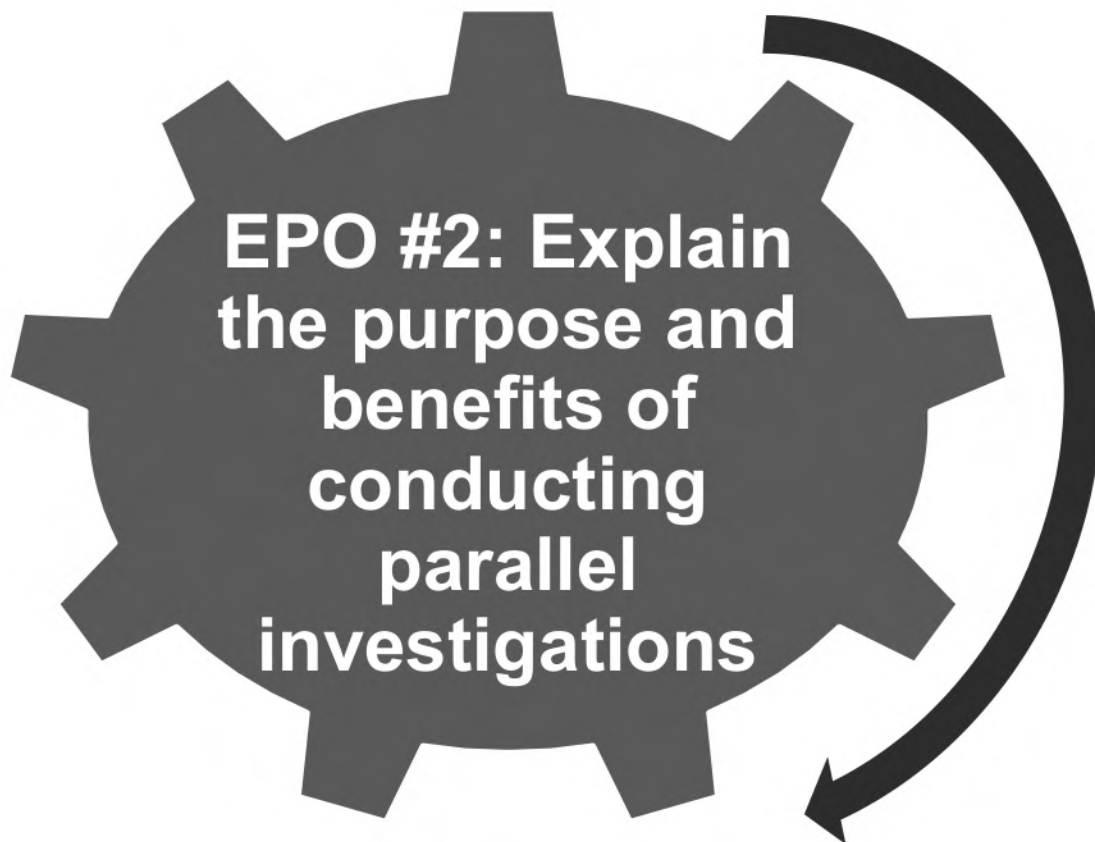


## Logistical Planning Issues (Cont'd)

### Budget and travel funding resources

- HSI Office Budgets
- Headquarters Significant Case funding
- OCDETF/HIDTA funding
- Certified Undercover Case (CUC) funding
- Other agency/task force funding

# Homeland Security Investigations (HSI)



## Parallel Investigation

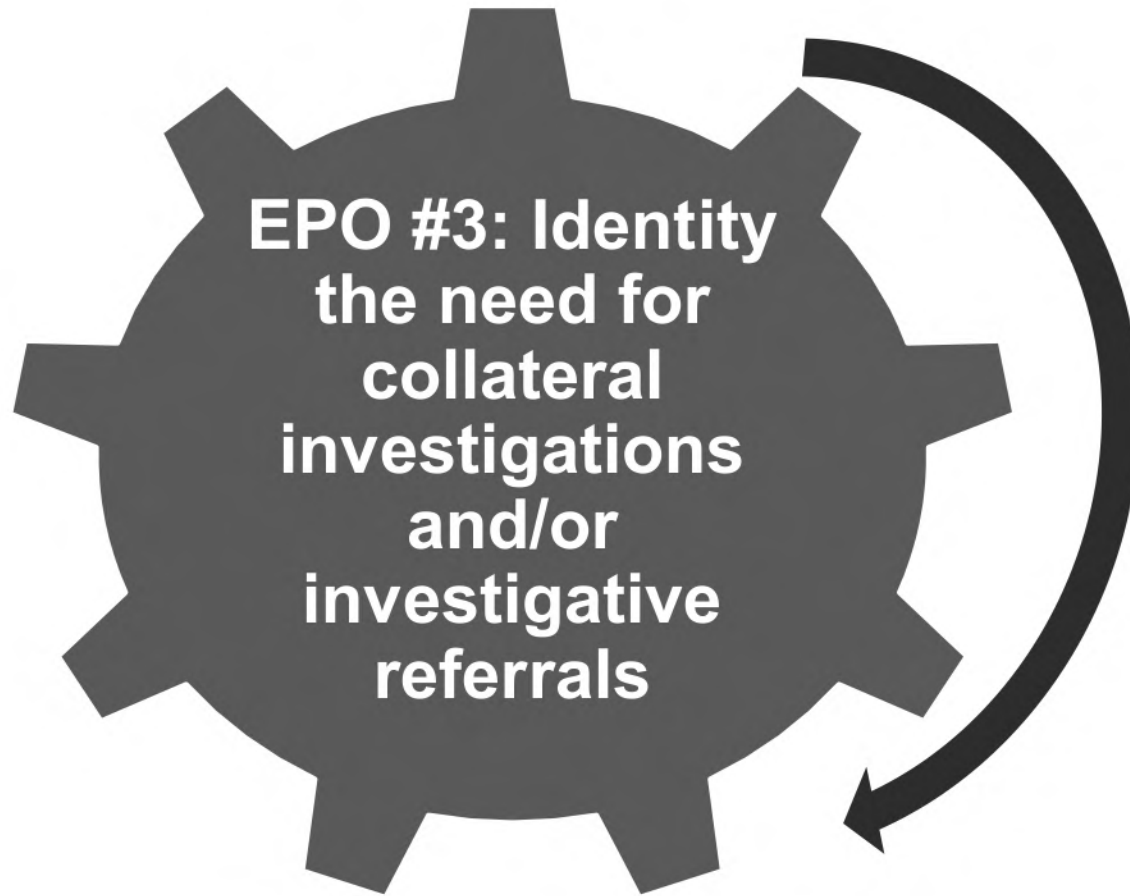
*“A separate and independent collection, analysis, and investigation of facts and circumstances using open and unrestricted sources of information without regard to identical facts and information previously developed and provided by another source(s)”*

# Homeland Security Investigations (HSI)

## Determine a Need for Parallel Investigations

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# Homeland Security Investigations (HSI)



# Homeland Security Investigations (HSI)

## Collateral Investigations

Request by an HSI office in one geographic location for specific investigative assistance to another HSI office – foreign and domestic – to support or enhance an ongoing criminal or civil investigation. Performing (b)(7)(E)

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Numerous types of collateral assistance to support another office's investigation

# Homeland Security Investigations (HSI)

## Considerations/Resources for Collateral Investigations

Manpower

Local priorities

Ongoing enforcement operations

Travel restrictions

Complexity of the leads to be followed

Local laws and regulations

# Homeland Security Investigations (HSI)

## Locating Offices to Send Collateral Investigations

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# Homeland Security Investigations (HSI)

## Locating Offices to Send Collateral Investigations, Con't.

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# Homeland Security Investigations (HSI)

## Foreign Collaterals

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# Homeland Security Investigations (HSI)

## Locating offices for foreign collateral requests

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# Homeland Security Investigations (HSI)

## Investigative Referrals

General non-case specific law enforcement information categorized as “tips” or “leads”

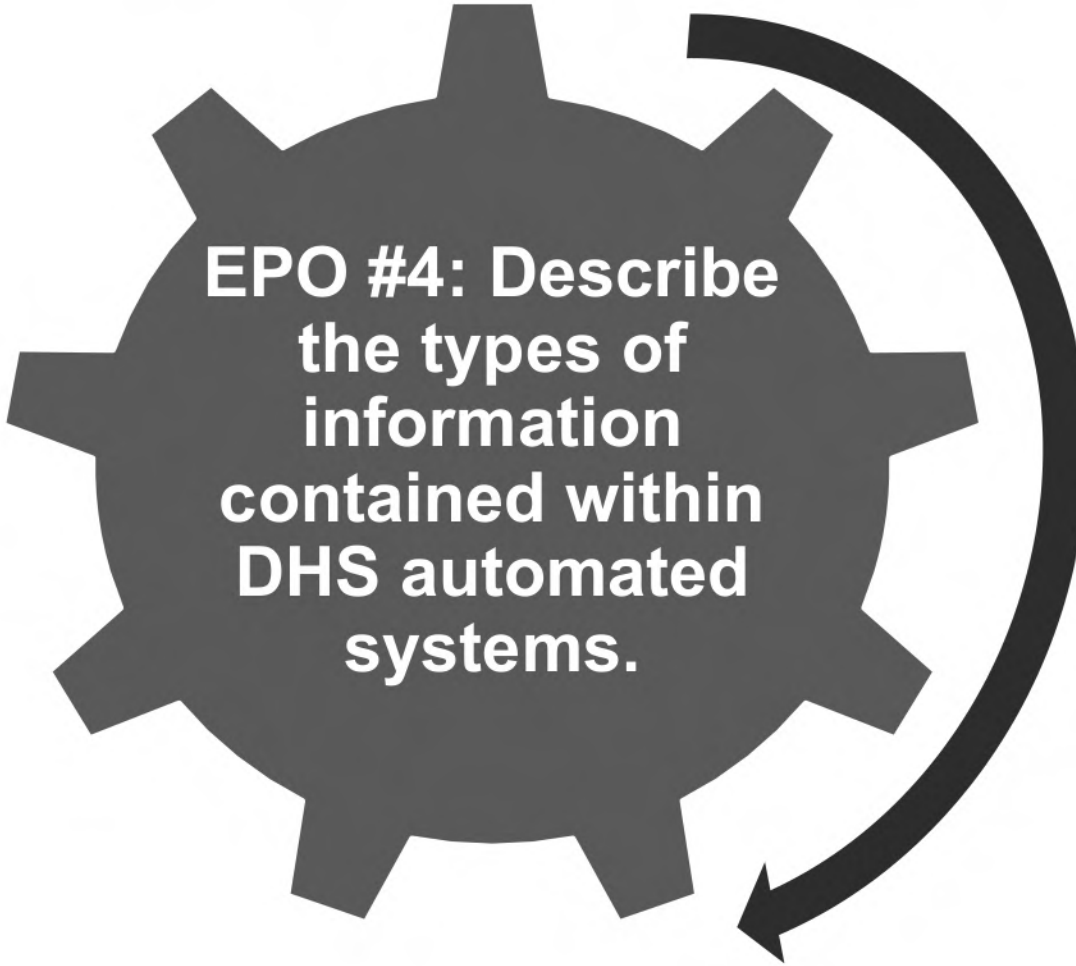
Referred to another HSI office(s) for action

Do not warrant collateral investigation

Can originate from various sources

Receiving offices have discretion on follow-up

# Homeland Security Investigations (HSI)



**EPO #4: Describe  
the types of  
information  
contained within  
DHS automated  
systems.**

# Homeland Security Investigations (HSI)

## DHS Automated Systems

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# Homeland Security Investigations (HSI)

## DHS Automated Systems (Cont'd)

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# Homeland Security Investigations (HSI)

## Other automated systems

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# Homeland Security Investigations (HSI)

## Law Enforcement Support Center (LESC)

LESC is a national enforcement operations facility administered by ICE. The center is a single national point of contact that provides timely immigration status, identity information, and real-time assistance to local, state, and federal law enforcement agencies on aliens suspected, arrested, or convicted of criminal activity. The center protects and defends the United States by sharing timely and relevant ICE information with our law enforcement partners around the world.

# Homeland Security Investigations (HSI)

## LESC Can Assist Field Offices

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# Homeland Security Investigations (HSI)

## Using LESC resources

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# Homeland Security Investigations (HSI)



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# Homeland Security Investigations (HSI)

## INTERPOL

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# Homeland Security Investigations (HSI)

## Federal Law Enforcement Partners

- Diplomatic Security Service (DSS)
- Drug Enforcement Administration (DEA)
- Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE)
- Federal Bureau of Investigation (FBI)
- Dept. of States/DDTC
- Dept. of Commerce BIS OEE

- Federal Aviation Administration
- U.S. Probation and Pre-Trial Services
- US Secret Service
- IRS Criminal Investigations Division
- Offices of Inspector Generals
- US Postal Inspection Service
- US Coast Guard Investigative Service

# Homeland Security Investigations (HSI)

## State, Local and Military Partners

City/county Police/Sheriffs Dept.

State wildlife/game enforcement agencies

College/university PDs

Marine/harbor patrol

State Highway patrol

Military police/security forces

Other State enforcement/investigative agencies

Military investigative agencies

# Homeland Security Investigations (HSI)

## Military Authority and Control

Military investigators have unique authority and jurisdiction over military personnel, government property, base housing, and work areas

Military regulations generally require personnel to cooperate with criminal investigations provided they are merely a witness or have otherwise been properly immunized

# Homeland Security Investigations (HSI)

## Tips for Interagency Coordination

The presence of state and local law enforcement authorities can serve several purposes in short-term tactical law enforcement operations generated by HSI investigations:

- Uniformed presence at enforcement operations
- Crowd control
- Child service
- Animal control
- Special services such as air support, explosive disposal, etc.

# Homeland Security Investigations (HSI)

## Other Types of Interagency Coordination

Asset sharing

HSI Task Force Officers

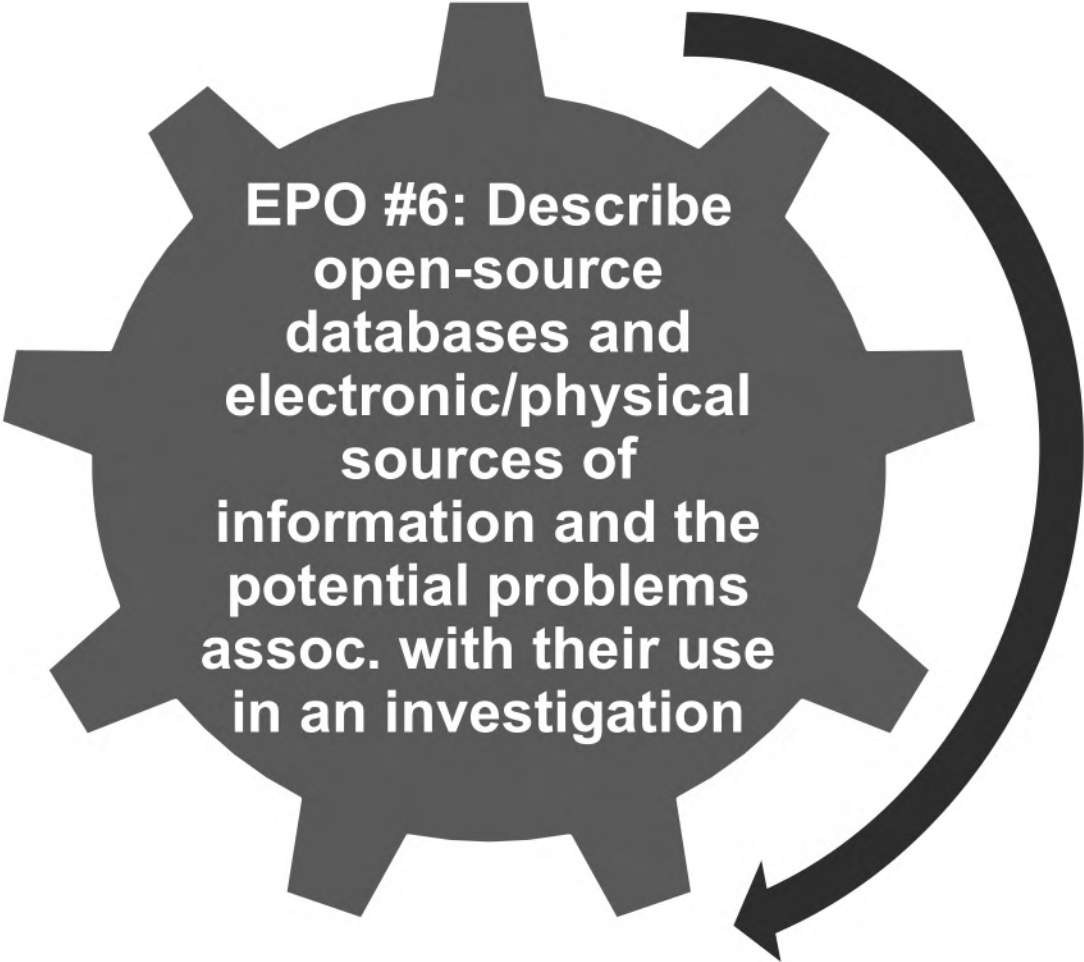
Press releases

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Shared prosecution of criminal activity

Establishment of coordination/de-confliction

# Homeland Security Investigations (HSI)



**EPO #6: Describe open-source databases and electronic/physical sources of information and the potential problems assoc. with their use in an investigation**

# Homeland Security Investigations (HSI)

## Open-Source Databases

Social network research

Geolocation

Common websites for querying

Mapping and satellite programs

Cautions

Reliability concerns

# Homeland Security Investigations (HSI)

## Search Engines, Archived Sites, Search Tools

Internet search engines

Archived sites –

<http://archive.org/web/waybackmachine>

- Web pages archived since 1996
- Collects Web data and images, including no longer existing
- Catalogues changes made to Web sites

Search tools – offer basic information but require an account for detailed material



# Homeland Security Investigations (HSI)

## Social Network Research

Facebook

Tumblr

Twitter

Instagram

LinkedIn

VK

Pinterest

Flickr

Google+

Vine

# Homeland Security Investigations (HSI)

## Geolocation

Flickr tags

Facebook, Foursquare, Twitter Users “check-in”

Twitter tweets link to map where user is located

- Twitter does not have images, but there are image apps with ties to interface with Twitter (for example, Instagram)

IP geolocation – [www.ip2location.com](http://www.ip2location.com)

# Homeland Security Investigations (HSI)

## Common Websites

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# Homeland Security Investigations (HSI)

## Cautions Working with Open Source Databases

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# Homeland Security Investigations (HSI)

## Reliability Concerns

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# Homeland Security Investigations (HSI)

## Electronic/Physical Sources of Information

Corroborate public online information with other investigative techniques

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# Homeland Security Investigations (HSI)

## Electronic/Physical Sources of Information (Cont'd)

### Public Records

- May be free and generally available to the public either online or in a physical building
- Most jurisdictions permit covert checks

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# Homeland Security Investigations (HSI)

## State Public Records

### Regulated industries, businesses, occupations

- State license required to conduct business for MDs, plumbers, cosmetologists, barbers, financial planners, many other professions

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### Corporations and Partnerships

- Filings – corporate officers, address of record, registered agent or rep, articles of incorporation, etc.

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# Homeland Security Investigations (HSI)



# Homeland Security Investigations (HSI)



## Unrestricted Sites

Information from unrestricted online sites is not considered intrusive

- Unrestricted sites – open to general public
- Payment sites / access fees – available to general public with payment of an access fee is considered open source

Materials normally protected under privacy laws might be considered open source if posted to unrestricted site

- Some sites post disclaimer of unrestricted access to general public with exception of law enforcement

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## Restricted Sites

Information  
from  
restricted  
sites  
requires:

- Court order
- Other legal process authorizing access
- Consent from authorized party

# Homeland Security Investigations (HSI)

## Preservation Letter, Subpoena, Warrant

Preservation letter [under 18 USC § 2703(f)] “to preserve records and other evidence in its possession pending the issuance of a court order...”

Administrative summons or subpoena to obtain basic subscriber info – name, address, subscriber number or identity, any temporarily assigned network address

Search warrant required for electronic communications in storage for 180 days or less

# Homeland Security Investigations (HSI)

## Real-Time Content Monitoring

Real-time content monitoring requires Title III court order

Consent Exception: banner or announcement that "all communications may be monitored" on the system creates implied consent and permits monitoring

Page 1516

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of the Freedom of Information and Privacy Act

Page 1517

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of the Freedom of Information and Privacy Act

Page 1518

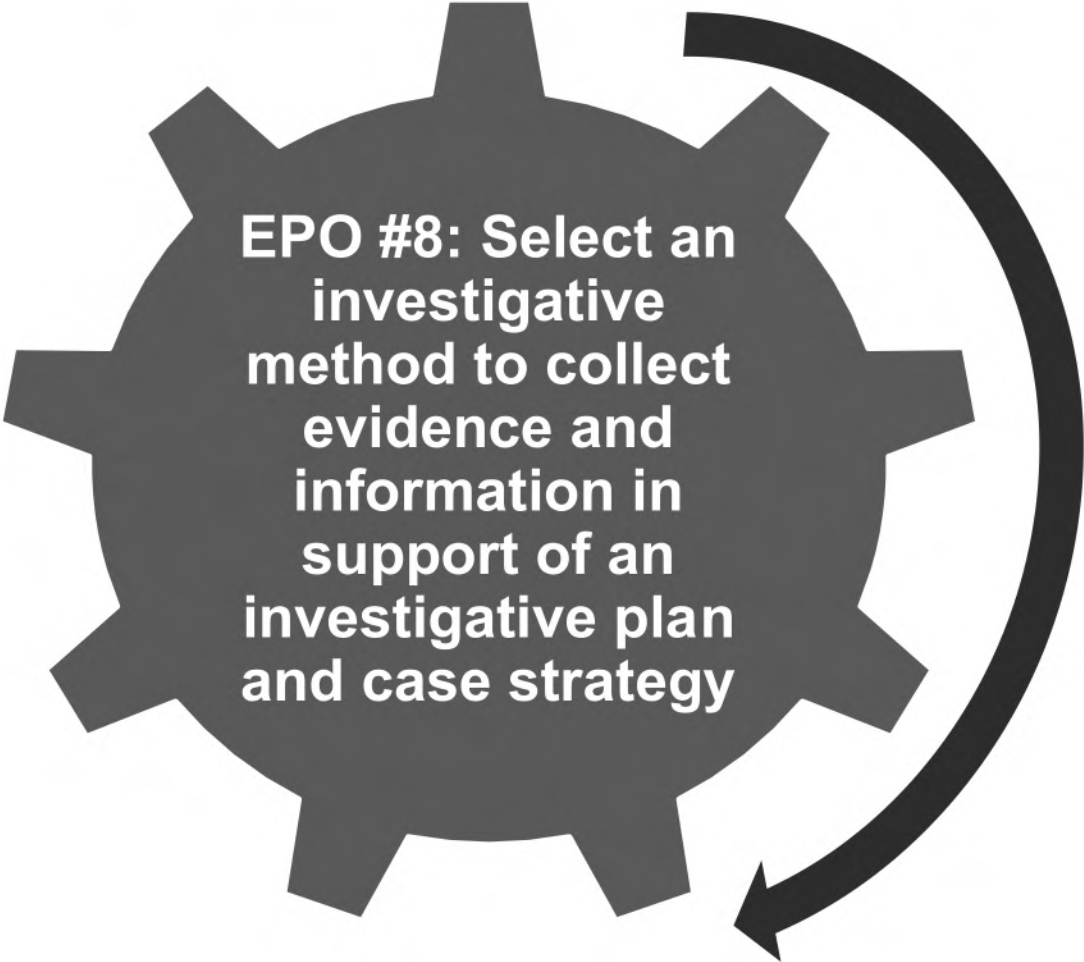
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of the Freedom of Information and Privacy Act



# Homeland Security Investigations (HSI)



**EPO #8: Select an investigative method to collect evidence and information in support of an investigative plan and case strategy**

# Homeland Security Investigations (HSI)

## Investigative Methods

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Page 1521

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of the Freedom of Information and Privacy Act

# Homeland Security Investigations (HSI)

## Pen Register/Trap and Trace

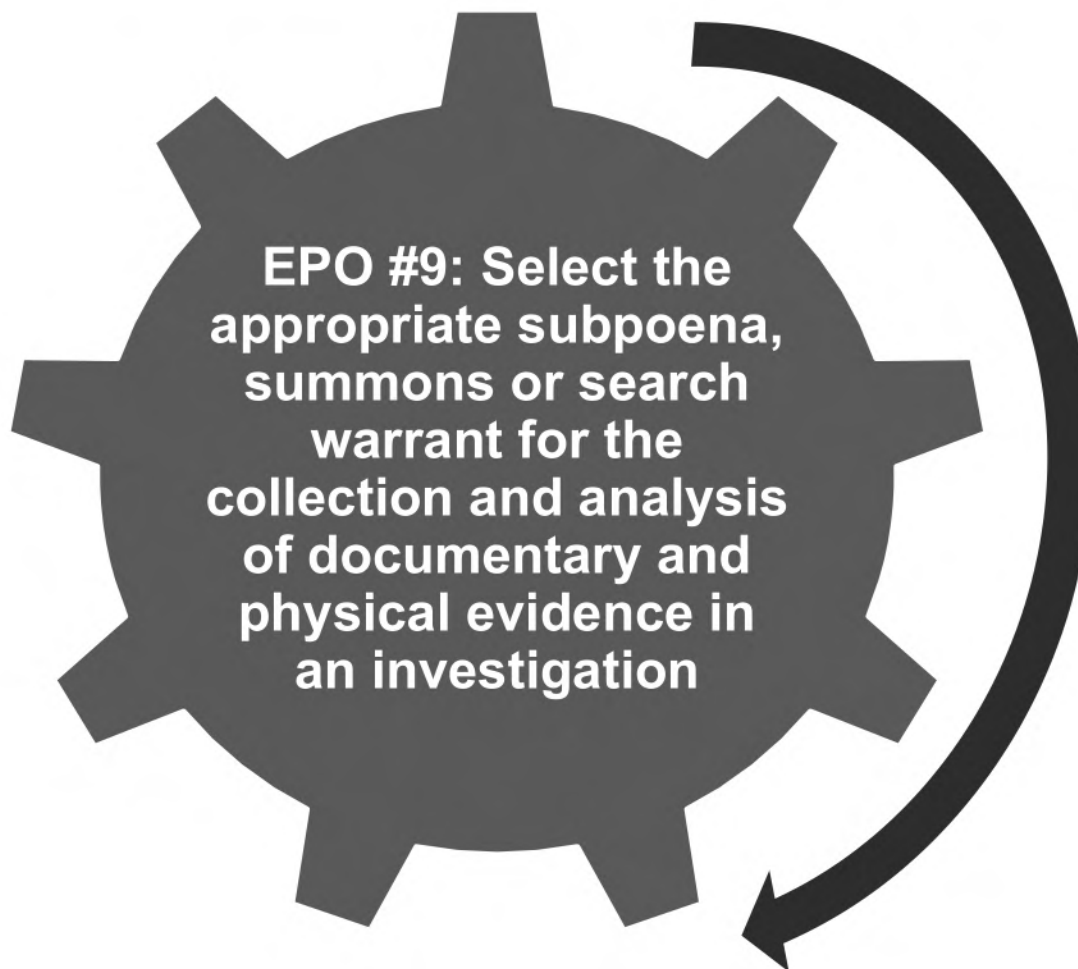
Pen Register records all numbers called (outgoing) from a particular telephone line

Trap and Trace records all numbers calling (incoming) a particular telephone line

Per the ECPA, an AUSA can obtain a Pen Register/Trap and Trace by certifying that information will “likely” be obtained in relations to a criminal investigation

Pen Register/Trap and Trace with GPS tracking of the phone requires an affidavit and probable cause

# Homeland Security Investigations (HSI)



# Homeland Security Investigations (HSI)

## Summons and Subpoenas

Tool to acquire documents, physical evidence, and testimony

No secrecy requirements or enforceable disclosure limits

Limited use and application for Financial documents/Electronic Communication

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– generates logs, and tracks

# Homeland Security Investigations (HSI)

## Summons and Subpoenas (Cont'd)

Usable at any stage of investigation prior to indictment

Can be judicially enforced

Often a record holder can assist or guide in proper wording to obtain all desired documents

Can serve subpoenas on targets, witnesses, and co-conspirators – witting and unwitting

# Homeland Security Investigations (HSI)

## Disadvantages of Summons and Subpoenas

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# Homeland Security Investigations (HSI)

## Types of Summons and Subpoenas

Title 21 Subpoena, HSI Form 73-021

Export Enforcement Subpoena, HSI Form 73-022

Immigration Enforcement Subpoena, DHS Form I-138

DHS Summons, DHS Form 3115

# Homeland Security Investigations (HSI)

## Types of Summons and Subpoenas (Cont'd)

### Grand Jury Subpoena

- Criminal cases only – no civil applications
- Documents, evidence, and testimony

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- Secrecy issues
- No probable cause (PC) required
- Signed by AUSA

### Trial Subpoena

- Post-indictment
- Documents, evidence, testimony post-indictment
- Requested by AUSA, but signed by court clerk

# Homeland Security Investigations (HSI)

## Search Warrants

Enables recovery of documentary and physical evidence

Requires PC and extensive pre-warrant investigation

Minimizes tampering or destruction of records

Permits onsite interviews of suspects and witnesses

Moves case from covert to overt in most instances

Can yield discovery of other violations and criminal activities

Sealed by the court when necessary

# Homeland Security Investigations (HSI)

## Demonstration

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# Homeland Security Investigations (HSI)

## Student Practice

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# Homeland Security Investigations (HSI)

## Summary

### Investigative Planning

- Investigations can originate from various sources
- Analyze information sufficiently
- A number of considerations available
- Some operational concerns require planning for logistical issues

### Investigative Methodology

- Search a (b)(7)(E)
- Consult other federal agencies
- Collect basic case data early in criminal investigation
- Search public records

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- Grand jury, administrative summons / subpoenas, search warrants



Protecting the Borders Against Illicit Trade, Travel, and Finance

# **US Immigration and Customs Enforcement OFFICE OF TRAINING AND DEVELOPMENT**

## **ICE Academy**



## **INVESTIGATIVE PLANNING**

### **Student Guide**

### **HSI Special Agent Training**

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**Homeland Security Investigations (HSI)**

**Terminal Performance Objective**

Given a set of case-related facts and a designated goal/objective, identify the type of planning required and its main points of focus to collect and produce information supporting the prosecution of the case in accordance with the HSI policies and guidelines

ICE Academy 2

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**Homeland Security Investigations (HSI)**

**Enabling Performance Objectives**

- Select an investigative strategy based on preliminary information and describe the priorities in developing an appropriate investigative plan
- Explain the purpose and benefits of conducting parallel investigations
- Identify the need for collateral investigations and/or investigative referrals

ICE Academy 3

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**Homeland Security Investigations (HSI)**

**Enabling Performance Objectives (Cont'd)**

Describe the types of investigative information and assistance available from various federal and state law enforcement agencies and organizations

Describe open-source databases and electronic and physical sources of information and the potential problems associated with their use in an investigation

Identify legal requirements associated with open source research

 ICE Academy 4

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**Homeland Security Investigations (HSI)**

**Enabling Performance Objectives (Cont'd)**

Select an investigative method to collect evidence and information in support of an investigative plan and case strategy

Select the appropriate subpoena, summons, or search warrant for the collection and analysis of documentary and physical evidence in an investigation

 ICE Academy 5

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**Homeland Security Investigations (HSI)**

**Review of the past– During CITP**

Practiced a number of investigative techniques

Studied documentation and report writing

Learned about the search warrants

Applied techniques during labs and the continuing case scenario

Trained in federal criminal law

 ICE Academy 6

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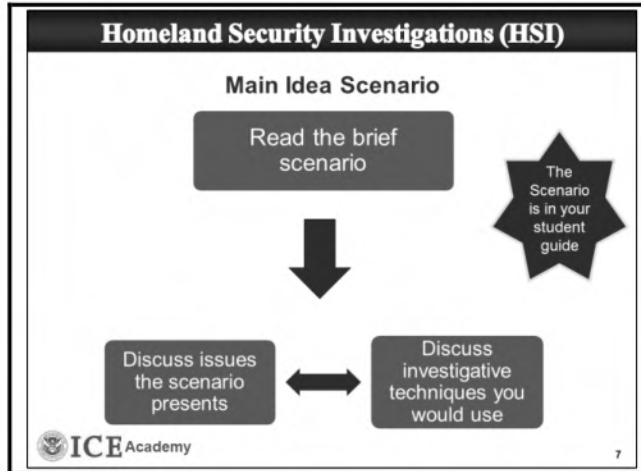
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**Homeland Security Investigations (HSI)**



EPO #1: Select an investigative strategy based on preliminary information and describe the priorities in developing an appropriate investigative plan

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**Homeland Security Investigations (HSI)**

**Investigations can originate from various sources**

- Anonymous sources
- Unsolicited letters sent to DHS
- Walk-in reporting by concerned citizens
- Referrals from other DHS entities
- Referrals from other agencies – federal, state, local
- Confidential Informants
- Spinoff cases

ICE Academy 11

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**Homeland Security Investigations (HSI)**

**Initial Information**

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ICE Academy 12

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### Homeland Security Investigations (HSI)

#### Notification and Deconfliction Requirements

- Existing MOUs/MOAs / Cross-agency jurisdiction
- Deconfliction of concurrent enforcement activity
  - DICE, JTTF, HIDTA, OCDEF, etc.
  - Local task forces
  - Local deconfliction centers (RISS)

Regional Information Sharing Systems (RISS) Program

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### Homeland Security Investigations (HSI)

#### Analyze Initial Information to Determine

ICE Academy

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### Homeland Security Investigations (HSI)

#### Analyze Initial Information to Determine (Cont'd)

HSI jurisdiction

National and local priorities

*What jurisdictional or local/national priorities could impact a potential investigation?*

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**Homeland Security Investigations (HSI)**

**Development of the Investigative Plan**

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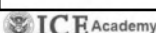
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**Homeland Security Investigations (HSI)**

**Additional Planning Issues**

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**Homeland Security Investigations (HSI)**

**Logistical Planning Issues**

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**Homeland Security Investigations (HSI)**

**Logistical Planning Issues (Cont'd)**

Budget and travel funding resources

- HSI Office Budgets
- Headquarters Significant Case funding
- OCDETF/HIDTA funding
- Certified Undercover Case (CUC) funding
- Other agency/task force funding

 ICE Academy 19

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**Homeland Security Investigations (HSI)**

**EPO #2: Explain the purpose and benefits of conducting parallel investigations**



 ICE Academy 20

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**Homeland Security Investigations (HSI)**

**Parallel Investigation**

*"A separate and independent collection, analysis, and investigation of facts and circumstances using open and unrestricted sources of information without regard to identical facts and information previously developed and provided by another source(s)"*

 ICE Academy 21

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**Homeland Security Investigations (HSI)**

**Determine a Need for Parallel Investigations**

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**Homeland Security Investigations (HSI)**



**EPO #3: Identify the need for collateral investigations and/or investigative referrals**

 ICE Academy 23

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**Homeland Security Investigations (HSI)**

**Collateral Investigations**

Request by an HSI office in one geographic location for specific investigative assistance to another HSI office – foreign and domestic – to support or enhance an ongoing criminal or civil investigation. Performing surveillance and photography of persons, businesses, or residences, or other specific locations

Numerous types of collateral assistance to support another office's investigation

 ICE Academy 24

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**Homeland Security Investigations (HSI)**  
**Considerations/Resources for Collateral Investigations**

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**Homeland Security Investigations (HSI)**  
**Locating Offices to Send Collateral Investigations**

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**Homeland Security Investigations (HSI)**  
**Locating Offices to Send Collateral Investigations, Con't.**

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**Homeland Security Investigations (HSI)**

**Foreign Collaterals**

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**Homeland Security Investigations (HSI)**

**Locating offices for foreign collateral requests**

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**Homeland Security Investigations (HSI)**

**Investigative Referrals**

- General non-case specific law enforcement information categorized as "tips" or "leads"
- Referred to another HSI office(s) for action
- Do not warrant collateral investigation
- Can originate from various sources
- Receiving offices have discretion on follow-up



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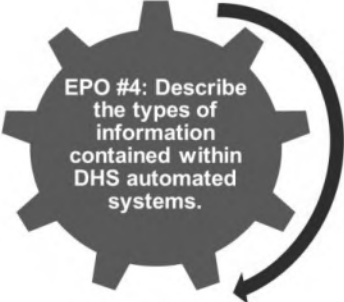
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**Homeland Security Investigations (HSI)**



EPO #4: Describe the types of information contained within DHS automated systems.

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**Homeland Security Investigations (HSI)**

**DHS Automated Systems**

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**Homeland Security Investigations (HSI)**

**DHS Automated Systems (Cont'd)**

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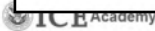

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<p><b>Homeland Security Investigations (HSI)</b></p> <p><b>Other automated systems</b></p> <p>(b)(7)(E)</p>  <p>34</p>	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
<p><b>Homeland Security Investigations (HSI)</b></p> <p><b>Law Enforcement Support Center (LESC)</b></p> <p>LESC is a national enforcement operations facility administered by ICE. The center is a single national point of contact that provides timely immigration status, identity information, and real-time assistance to local, state, and federal law enforcement agencies on aliens suspected, arrested, or convicted of criminal activity. The center protects and defends the United States by sharing timely and relevant ICE information with our law enforcement partners around the world.</p>  <p>35</p>	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
<p><b>Homeland Security Investigations (HSI)</b></p> <p><b>LESC Can Assist Field Offices</b></p> <p>(b)(7)(E)</p>	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>

**Homeland Security Investigations (HSI)**

Using LESC resources

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**Homeland Security Investigations (HSI)**



EPO #5: Describe the types of investigative information and assistance available from various federal and state law enforcement agencies

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**Homeland Security Investigations (HSI)**

HSI Forensic Laboratory

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**Homeland Security Investigations (HSI)**

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**Homeland Security Investigations (HSI)**

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**Homeland Security Investigations (HSI)**

**Federal Law Enforcement Partners**

Diplomatic Security Service (DSS)	Federal Aviation Administration
Drug Enforcement Administration (DEA)	U.S. Probation and Pre-Trial Services
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)	US Secret Service
Federal Bureau of Investigation (FBI)	IRS Criminal Investigations Division
Dept. of States/DDTC	Offices of Inspector Generals
Dept. of Commerce BIS/OEE	US Postal Inspection Service
	US Coast Guard Investigative Service

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**Homeland Security Investigations (HSI)**

**State, Local and Military Partners**

City/county Police/Sheriffs Dept.	State wildlife/game enforcement agencies
College/university PDs	Marine/harbor patrol
State Highway patrol	Military police/security forces
Other State enforcement/investigative agencies	Military investigative agencies

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**Homeland Security Investigations (HSI)**

**Military Authority and Control**

Military investigators have unique authority and jurisdiction over military personnel, government property, base housing, and work areas

Military regulations generally require personnel to cooperate with criminal investigations provided they are merely a witness or have otherwise been properly immunized

ICE Academy 45

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**Homeland Security Investigations (HSI)**

**Tips for Interagency Coordination**

The presence of state and local law enforcement authorities can serve several purposes in short-term tactical law enforcement operations generated by HSI investigations:

- Uniformed presence at enforcement operations
- Crowd control
- Child service
- Animal control
- Special services such as air support, explosive disposal, etc.

ICE Academy 46

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**Homeland Security Investigations (HSI)**

**Other Types of Interagency Coordination**

- Asset sharing
- HSI Task Force Officers
- Press releases
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- Shared prosecution of criminal activity
- Establishment of coordination/de-confliction

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**Homeland Security Investigations (HSI)**

**EPO #6: Describe open-source databases and electronic/physical sources of information and the potential problems assoc. with their use in an investigation**

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**Homeland Security Investigations (HSI)**

**Open-Source Databases**

- Social network research
- Geolocation
- Common websites for querying
- Mapping and satellite programs
- Cautions
- Reliability concerns

ICE Academy 49

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**Homeland Security Investigations (HSI)**

**Search Engines, Archived Sites, Search Tools**

Internet search engines

Archived sites –  
<http://archive.org/web/waybackmachine>

- Web pages archived since 1996
- Collects Web data and images, including no longer existing
- Catalogues changes made to Web sites

Search tools – offer basic information but require an account for detailed material

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**Homeland Security Investigations (HSI)**

**Social Network Research**

Facebook	Tumblr
Twitter	Instagram
LinkedIn	VK
Pinterest	Flickr
Google+	Vine

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**Homeland Security Investigations (HSI)**

**Geolocation**


Flickr tags

Facebook, Foursquare, Twitter Users “check-in”

Twitter tweets link to map where user is located

- Twitter does not have images, but there are image apps with ties to interface with Twitter (for example, Instagram)

IP geolocation – [www.ip2location.com](http://www.ip2location.com)

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**Homeland Security Investigations (HSI)**

**Common Websites**

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**Homeland Security Investigations (HSI)**

**Cautions Working with Open Source Databases**

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**Homeland Security Investigations (HSI)**

**Reliability Concerns**

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**Homeland Security Investigations (HSI)**

**Electronic/Physical Sources of Information**

Corroborate public online information with other investigative techniques

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**Homeland Security Investigations (HSI)**

**Electronic/Physical Sources of Information (Cont'd)**

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**Homeland Security Investigations (HSI)**

**State Public Records**

<p>Regulated industries, businesses, occupations</p> <ul style="list-style-type: none"> <li>State license required to conduct business for MDs, plumbers, cosmetologists, barbers, financial planners, many other professions</li> </ul> <p>(b)(7)(E)</p>	<p>Corporations and Partnerships</p> <ul style="list-style-type: none"> <li>Filings – corporate officers, address of record, registered agent or rep, articles of incorporation, etc.</li> </ul> <p>(b)(7)(E)</p>
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**Homeland Security Investigations (HSI)**



EPO #7: Identify legal requirements associated with open source research

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**Homeland Security Investigations (HSI)**

**Unrestricted Sites**

Information from unrestricted online sites is not considered intrusive

- Unrestricted sites – open to general public
- Payment sites / access fees – available to general public with payment of an access fee is considered open source

Materials normally protected under privacy laws might be considered open source if posted to unrestricted site

- Some sites post disclaimer of unrestricted access to general public with exception of law enforcement
- May not constitute REP – (b)(5); (b)(5); (b)(7)(E)

ICE Academy 60

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**Homeland Security Investigations (HSI)**

**Restricted Sites**

Information from restricted sites requires:

- Court order
- Other legal process authorizing access
- Consent from authorized party

ICE Academy 61

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**Homeland Security Investigations (HSI)**

**Preservation Letter, Subpoena, Warrant**

Preservation letter [under 18 USC § 2703(f)] "to preserve records and other evidence in its possession pending the issuance of a court order..."

Administrative summons or subpoena to obtain basic subscriber info – name, address, subscriber number or identity, any temporarily assigned network address

Search warrant required for electronic communications in storage for 180 days or less

ICE Academy 62

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**Homeland Security Investigations (HSI)**

**Real-Time Content Monitoring**

Real-time content monitoring requires Title III court order

Consent Exception: banner or announcement that "all communications may be monitored" on the system creates implied consent and permits monitoring

ICE Academy 63

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**Homeland Security Investigations (HSI)**

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**Homeland Security Investigations (HSI)**

**Other Providers and Their Services**

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**Homeland Security Investigations (HSI)**



EPO #8: Select an investigative method to collect evidence and information in support of an investigative plan and case strategy

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**Homeland Security Investigations (HSI)**

**Investigative Methods**

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**Homeland Security Investigations (HSI)**

**Investigative Methods (Cont'd)**

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**Homeland Security Investigations (HSI)**


**Pen Register/Trap and Trace**

Pen Register records all numbers called (outgoing) from a particular telephone line

Trap and Trace records all numbers calling (incoming) a particular telephone line

Per the ECPA, an AUSA can obtain a Pen Register/Trap and Trace by certifying that information will "likely" be obtained in relations to a criminal investigation

Pen Register/Trap and Trace with GPS tracking of the phone requires an affidavit and probable cause

 ICE Academy 70

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**Homeland Security Investigations (HSI)**

**EPO #9: Select the appropriate subpoena, summons or search warrant for the collection and analysis of documentary and physical evidence in an investigation**

 ICE Academy 71

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**Homeland Security Investigations (HSI)**


**Summons and Subpoenas**

Tool to acquire documents, physical evidence, and testimony

No secrecy requirements or enforceable disclosure limits

Limited use and application for Financial documents/Electronic Communication

(b)(7)(E)  generates logs, and tracks

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**Homeland Security Investigations (HSI)**

**Summons and Subpoenas (Cont'd)**

- Usable at any stage of investigation prior to indictment
- Can be judicially enforced
- Often a record holder can assist or guide in proper wording to obtain all desired documents
- Can serve subpoenas on targets, witnesses, and co-conspirators – witting and unwitting

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**Homeland Security Investigations (HSI)**

**Disadvantages of Summons and Subpoenas**

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**Homeland Security Investigations (HSI)**

**Types of Summons and Subpoenas**

- Title 21 Subpoena, HSI Form 73-021
- Export Enforcement Subpoena, HSI Form 73-022
- Immigration Enforcement Subpoena, DHS Form I-138
- DHS Summons, DHS Form 3115

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**Homeland Security Investigations (HSI)**

**Types of Summons and Subpoenas (Cont'd)**

Grand  
Jury  
Subpoena

- Criminal cases only – no civil applications
- Documents, evidence, and testimony

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- Secrecy issues
- No probable cause (PC) required
- Signed by AUSA

Trial  
Subpoena

- Post-indictment
- Documents, evidence, testimony post-indictment
- Requested by AUSA, but signed by court clerk

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**Homeland Security Investigations (HSI)**

**Search Warrants**

Enables recovery of documentary and physical evidence

Requires PC and extensive pre-warrant investigation

Minimizes tampering or destruction of records

Permits onsite interviews of suspects and witnesses

Moves case from covert to overt in most instances

Can yield discovery of other violations and criminal activities

Sealed by the court when necessary

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**Homeland Security Investigations (HSI)**

**Demonstration**

(b)(7)(E)

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**Homeland Security Investigations (HSI)**

**Student Practice**

(b)(7)(E)

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**Homeland Security Investigations (HSI)**


**Summary**

**Investigative Planning**

- Investigations can originate from various sources
- Analyze information sufficiently
- A number of considerations available
- Some operational concerns require planning for logistical issues

**Investigative Methodology**

- Search (b)(7)(E)
- Consult other federal agencies
- Collect basic case data early in criminal investigation
- Search public records
- (b)(7)(E)
- Grand jury, administrative summons / subpoenas, search warrants

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## Main Ideas Scenario

(b)(7)(E)



## Demonstration Scenario

(b)(7)(E)

- Investigative strategy and methodology sequence

- What the SA should do, when, and why

## Practice Scenario

### Directions:

- Work with your group.
- Select a team leader and a scribe to document the results of the case analysis
- Review the scenario and develop an investigative plan that:

(b)(7)(E)

- Prepare to present your team decisions and information to the class
  - Select a team leader to lead the discussion
  - Everyone in your group should participate

### Scenario:

(b)(7)(E)



- Investigative strategy and methodology sequence

- What the SA should do, when, and why

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of the Freedom of Information and Privacy Act

Page 1570

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Grand Jury Subpoena for \_\_\_\_\_

Pursuant to a criminal investigation being conducted by U.S. Immigration and Customs Enforcement, Department of Homeland Security, Atlanta, GA, it is hereby requested that your company provide files and records including electronic media for all open and closed accounts and services related to the following individual and businesses:

Name: \_\_\_\_\_  
 DOB: \_\_\_\_\_  
 Address: \_\_\_\_\_

Name: \_\_\_\_\_  
 DOB: \_\_\_\_\_  
 Address: \_\_\_\_\_

Response to this subpoena is needed as soon as possible. Please provide the following case identification number on all returned documents: \_\_\_\_\_. You may not notify your customer of the existence of this request, as any such disclosure could jeopardize the investigation.

**Initial response to this subpoena should include monthly bank statement only, for the period \_\_\_\_\_.** However, additional files, records and services may be requested at a later date. Files, records and services include but are not limited to:

**A. All open or closed checking, savings, and NOW accounts:**

1. Signature cards.
2. Bank statements.
3. Cancelled checks (both sides).
4. Deposit tickets and items (both sides of items, including ATM and direct deposits).
5. ATM withdrawals and point of sale debits.
6. Credit and debit memos.
7. Wire transfer records.
8. Forms 1099 or back-up withholding statements.

**B. Retained copies of all open or closed bank loan or mortgage documents:**

1. Loan applications.
2. Loan ledger sheets.
3. Copy of loan disbursement documents.
4. Copy of loan repayment documents.
5. Loan correspondence files.
6. Collateral agreements.
7. Credit reports.
8. Copies of notes or other instruments reflecting the obligation to pay.



**Forging a New Legacy**

# **Homeland Security Investigations**

**Post-Arrest Obligations**

**ICE HSI Special Agent Training**

**ICE Academy**

# Homeland Security Investigations (HSI)

## Your Job Doesn't Stop with the Arrest...

- Arrest the individual for a crime Post-Arrest consists of several required steps If any of these steps are omitted, the government cannot fully prosecute the subject And your hard work will have been in vain

# Homeland Security Investigations (HSI)

## Investigative Phases

HSI SA Case Assignment



Investigative Plan Development

(b)(7)(E)

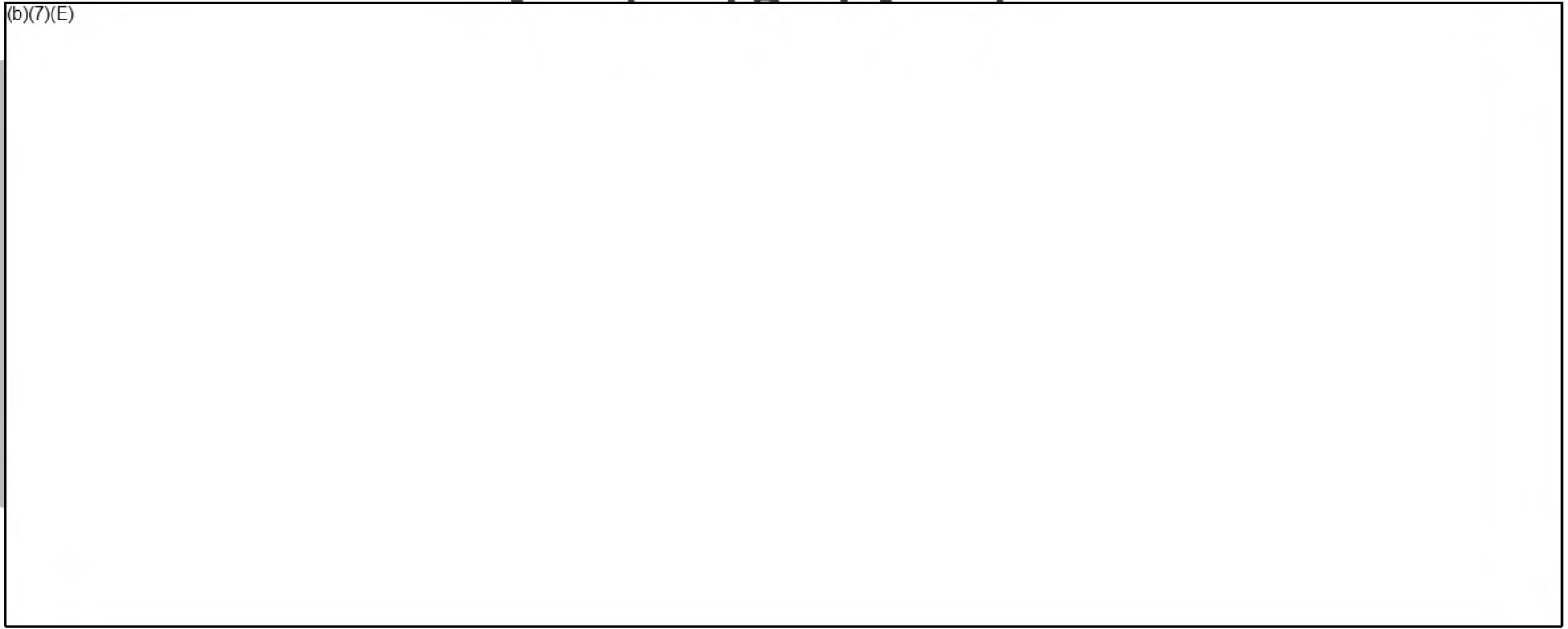




## Investigative Phases, cont'd



(b)(7)(E)



# Homeland Security Investigations (HSI)

## Agenda

- Post-arrest issues SA's pretrial role  
Defendant's Sixth Amendment rights  
Practice activity

# Homeland Security Investigations (HSI)

## Terminal Performance Objective

Given a law enforcement scenario with the arrest of a subject, determine and explain the post-arrest obligations; in accordance with the Sixth Amendment, Federal Rules of Criminal Procedure 4 and 5, and Section and Title 18 of the U.S. Code.

# Homeland Security Investigations (HSI)

## Enabling Performance Objectives

- Explain post-arrest obligations that arise immediately after arrest. Describe the SA's obligations associated with matters pretrial. Describe the criminal defendant's Sixth Amendment right to counsel. Explain the SA's obligations associated with pretrial depositions, witnesses, and the Confrontation Clause.

# Homeland Security Investigations (HSI)

## Post-Arrest Procedure

1. Crime  
Committed  
Investigation  
Arrest  
Initial Appearance  
Detention  
Hearing  
Preliminary Hearing  
Indictment/  
Grand Jury
8. Arraignment  
Discovery  
Pre-Trial  
Motions  
Plea  
Trial  
Conviction/  
Sentencing  
Appeal

**See Student Guide p. 3**

# Homeland Security Investigations (HSI)

## Pre-Arrest and Arrest

- Complaint <sup>(b)(7)(E)</sup> [redacted] Arrest Warrant <sup>(b)(7)(E)</sup> [redacted] with Affidavit of Probable Cause USMJ issues; SA signs under oath Execution Return executed warrant to USMJ Arrest without an arrest warrant DNA sample collection
-

# Homeland Security Investigations (HSI)

## Prompt Presentment

- FRCrimP Rule 5(a) requires that law enforcement take the arrestee, without unnecessary delay, before a magistrate for the Initial Appearance. FRCrimP Rule 5(d) – USMJ advises defendant of criminal complaint; defendant’s right to counsel; pretrial release options; right to a preliminary hearing; right to remain silent; and right to consult with counsel. Juveniles presented “forthwith.”

# Homeland Security Investigations (HSI)

## Post-Arrest Statement

- 18 U.S.C. § 3501(c) – Six hour rule  
Corley Rule  
48 Hour Rule

**See Student Guide p. 6**



# Homeland Security Investigations (HSI)

## Post-Arrest Consular Notification

Law enforcement arresting a foreign national must notify the consular post of the arrestee's home country and allow consular official to visit and consult the with arrestee. Determine foreign national's country Offer, without delay, to notify consular officials Notify foreign national's country without delay if requested If not requested, determine mandatory notification Complete notification as required; inform arrestee Document actions in ROI

**See Student Guide p. 8**

# Homeland Security Investigations (HSI)

## Demonstration

(b)(7)(E)

# Homeland Security Investigations (HSI)

## Matters Pretrial

Fifth Amendment: “[N]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury...” Preliminary hearing (FRCrimP Rule 5.1) required unless the defendant waives, is indicted by grand jury, or a criminal information filed Grand jury (FRCrimP Rule 6) responsible for issuing an indictment

# Homeland Security Investigations (HSI)

## Arraignment [FRCrimP Rule 10]

- Arraignment must be conducted in open court and must:  
Provide defendant with copy of indictment or information  
Read indictment or information to defendant  
Ask defendant to plead to indictment or information

# Homeland Security Investigations (HSI)

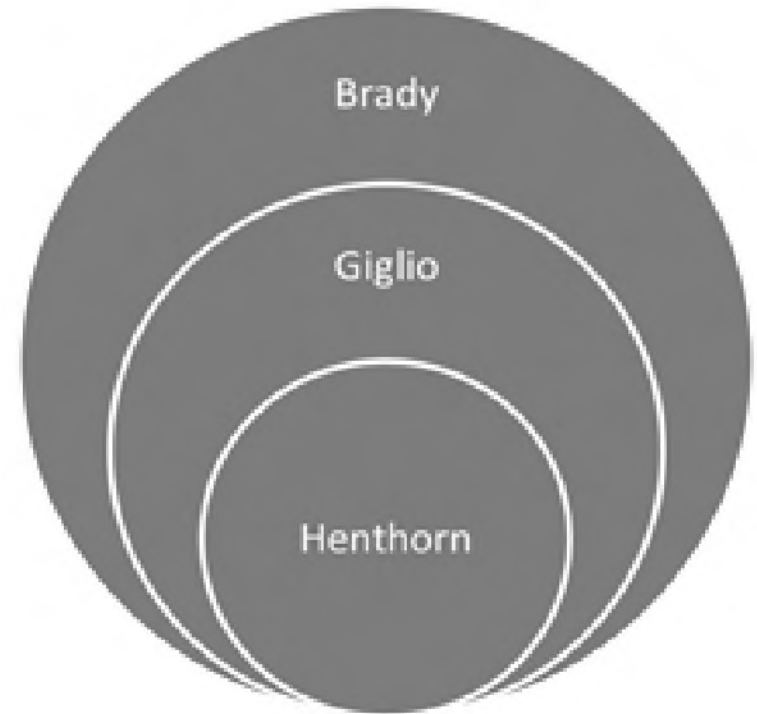
## Pretrial Motions [FRCrimP Rule 12]

- Motion to Suppress Evidence  
Motion to Sever Charges or Defendants  
Motion for Discovery

# Homeland Security Investigations (HSI)

## Pretrial Discovery

- ***Brady and FRCrimP Rule***  
***16Giglio material Henthorn***  
***Rule Jencks Rule ICE Policy***



**See Student Guide p. 13**

# Homeland Security Investigations (HSI)

## Demonstration

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# Homeland Security Investigations (HSI)

## Sixth Amendment: Right to Counsel

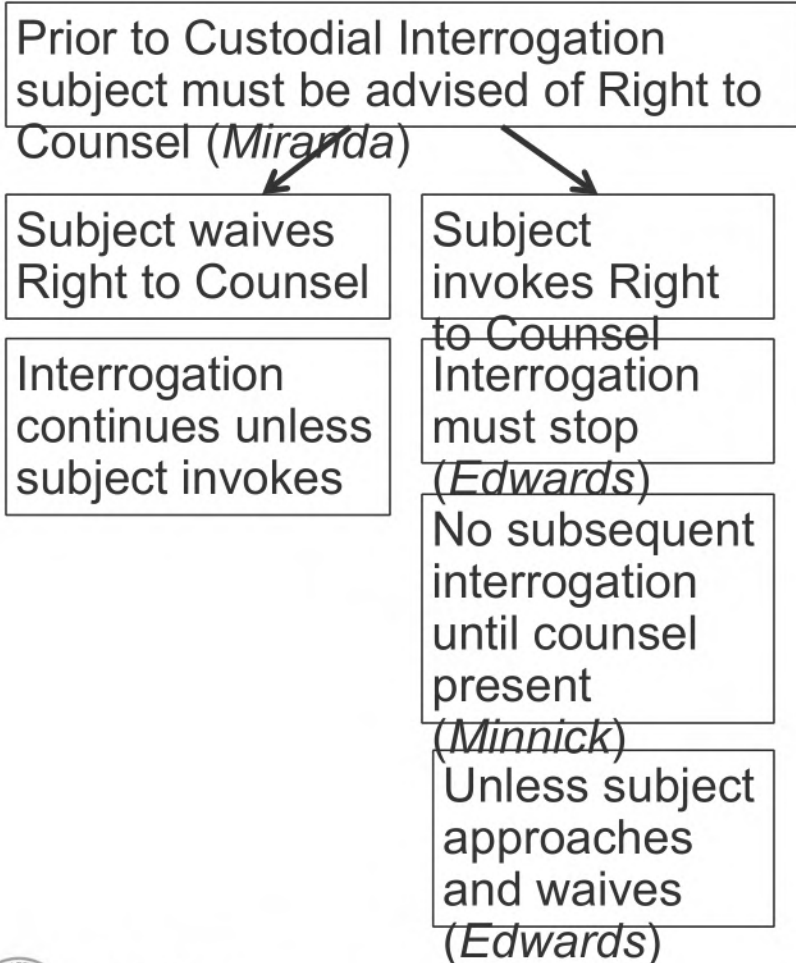
- “[I]n all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense.” Right to counsel Attaches only after adversary judicial proceeding initiated and at critical stages Is offense specific May be waived by defendant



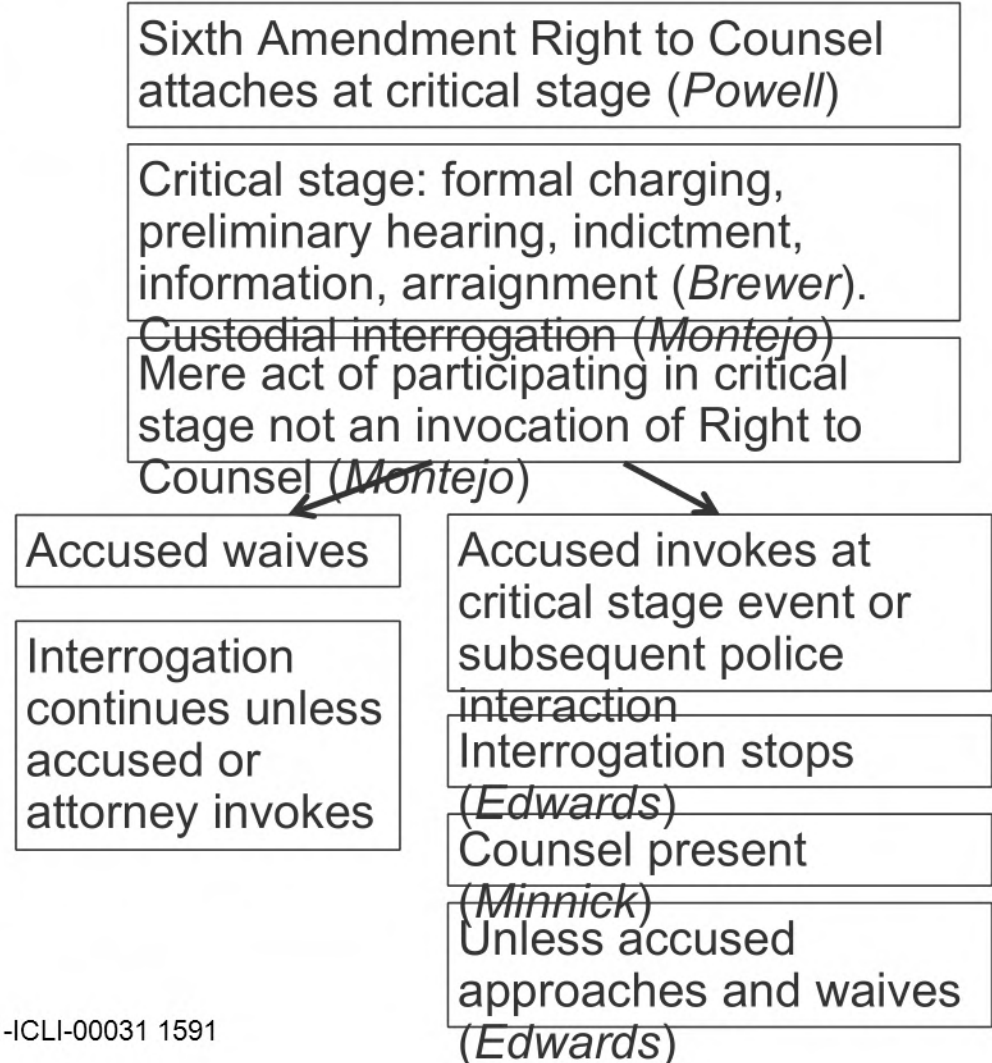
# Homeland Security Investigations (HSI)

## Right to Counsel Analysis

### Fifth Amendment



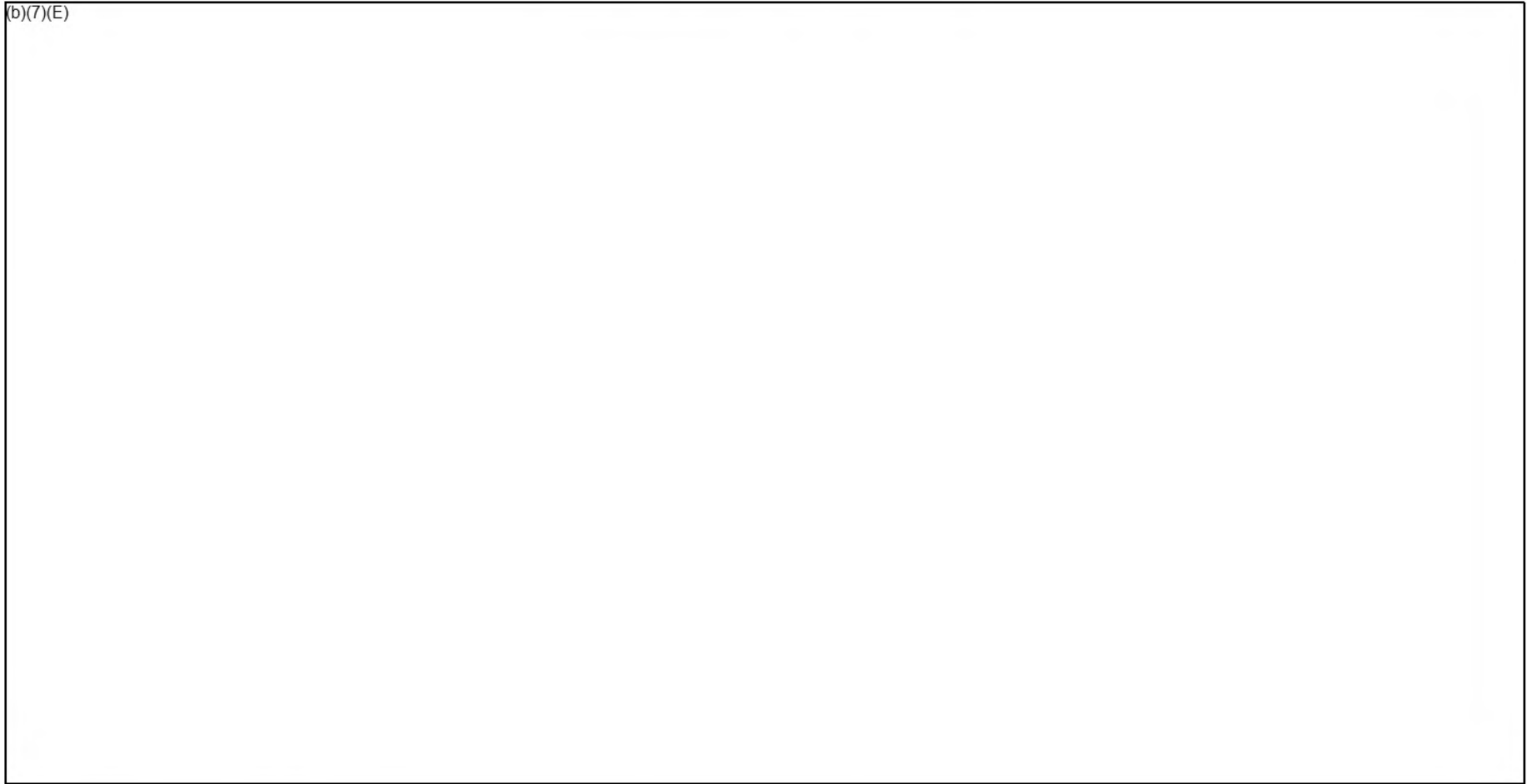
### Sixth Amendment



# Homeland Security Investigations (HSI)

## Demonstration

(b)(7)(E)



# Homeland Security Investigations (HSI)

## Pretrial Depositions, Witnesses, and the Confrontation Clause

- Confrontation Clause – “In all criminal prosecutions, the accused shall enjoy the right ...to be confronted with the witnesses against him.” Crawford Rule – Testimonial statements of witnesses absent from trial will be admitted only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine. Impact of Crawford Rule on SA – Material witness; 18 U.S.C. § 3144; FRCrimP Rule 15(a); 8 U.S.C. § 1324(d)

**See Student Guide p. 18**



# Homeland Security Investigations (HSI)

## Demonstration

(b)(7)(E)

# Homeland Security Investigations (HSI)

## Practice

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# Homeland Security Investigations (HSI)

## Practice, cont'd

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# Homeland Security Investigations (HSI)

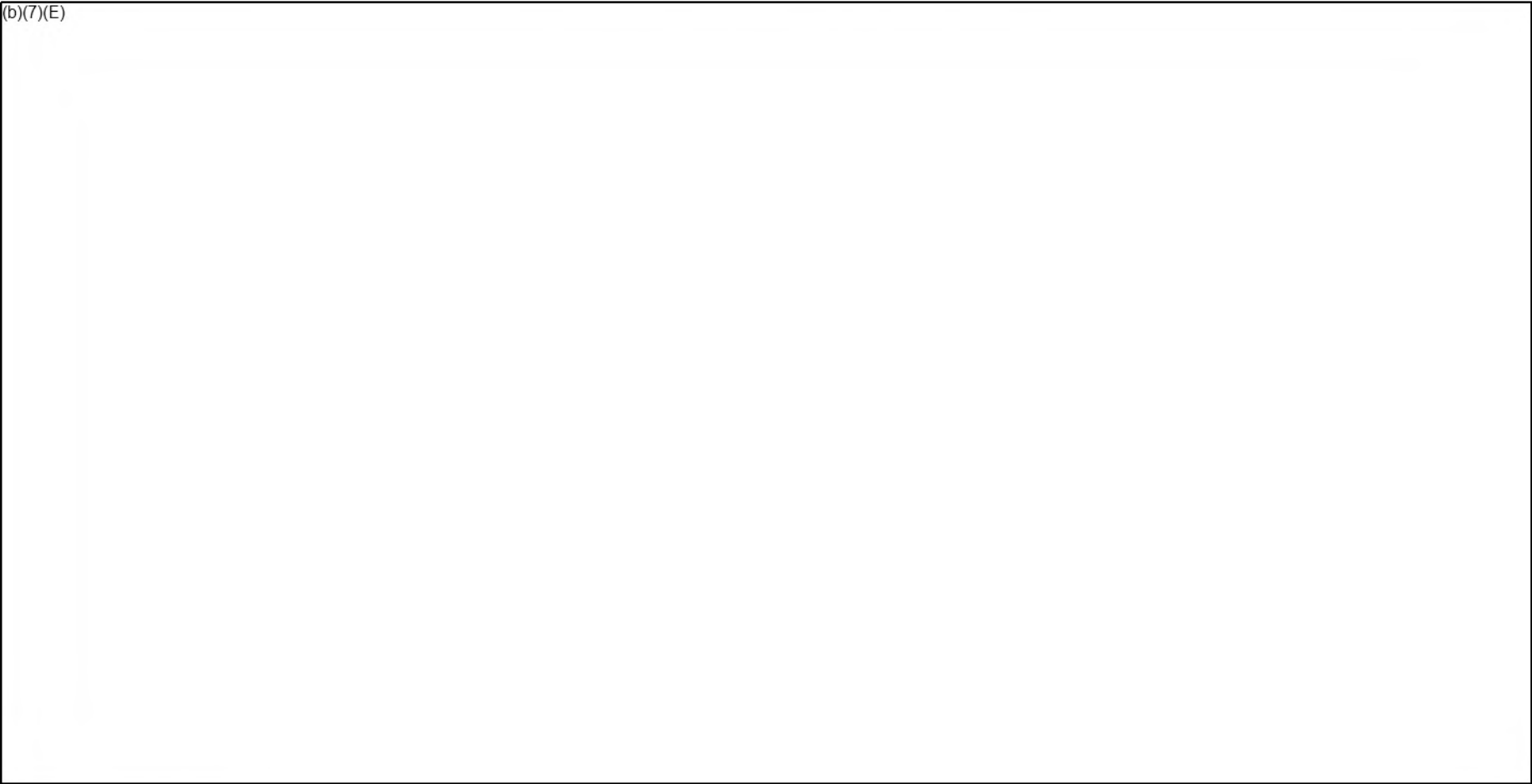
## Practice, cont'd

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# Homeland Security Investigations (HSI)

## Practice, cont'd

(b)(7)(E)





# Homeland Security Investigations (HSI)

## Practice, cont'd

(b)(7)(E)

# Homeland Security Investigations (HSI)

## Summary

- A criminal complaint is needed Promptly present criminal defendants before a magistrate judge Provide foreign nationals with rights connected to consular notification Defendants are entitled to a grand jury or a preliminary hearing Provide defendant with certain information (discovery) prior to trial In a criminal prosecution, the accused has the right to counsel Defendant has a right to confront and cross-examine any witness against him

# Homeland Security Investigations (HSI)

## Looking Ahead

- This lesson addressed obligations to be met after arresting a subject  
Next lesson will discuss federal sentencing guidelines



Protecting the Borders Against Illicit Trade, Travel, and Finance

## Reasonable Expectation of Privacy

### *Situations where courts have found reasonable expectation of privacy to be present*

1. **A person's body**
2. **A person's dwelling** (home)
3. **Curtilage** – The area immediately surrounding a dwelling where the dwelling occupant enjoys a reasonable expectation of privacy from government's physical intrusion. Government's physical presence on a dwelling's curtilage is a Fourth Amendment search. Factors that define the extent of a dwelling's curtilage:
  - a. How close it is, or whether it is connected, to the dwelling
  - b. Whether the area is enclosed
  - c. How it is used by the occupant
  - d. Steps taken by the occupant to protect the area from observation by people passing by.
4. **Buildings** that are not dwellings do not have curtilage, but one may have a REP in such structures. Example – A tool shed on the property is protected from government's physical intrusion, but government may walk within inches of the building as long as it is not on the home's curtilage.
5. **Private spaces inside buildings** have REP and are protected by the Fourth Amendment, but a law enforcement officer is free to enter any part of a building that is open to the general public.
6. **Baggage** (purse, backpack, suitcase, etc.): Containers made from see through do not have REP. On the other hand, if a Special Agent cannot determine what is inside a given container without opening it (visual intrusion) or squeezing it (physical intrusion), the contents are protected by a reasonable expectation of privacy.
7. **Conveyances** (car, boat, aircraft, etc.): A driver or passenger has a reasonable expectation of privacy from physical intrusion into his or her vehicle.
8. **Private communications:** Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (the primary Federal "wire tap" law which is found at 18 U.S.C. §§ 2510-2520) imposes limitations on auditory intrusions into private conversations. Title III prohibits any person (not just government agents) from using a device to intercept the contents of a telephonic or electronic communication, as well as any oral conversation protected by REP, without first obtaining a court order or the consent of at least one party to the communication. Title III violations are subject to a \$10,000 civil fine per violation, as well as criminal prosecution.

**Situations in which a person does NOT enjoy a reasonable expectation of privacy:**

1. **Open field:** A location where there is no REP from physical intrusion such as a public parking lot or the land on a large rural parcel located outside of the curtilage of any dwelling house located on private property.
2. **Open view:** An area where there is no REP from visual intrusion such as the contents of the passenger compartment of a motor vehicle visible through the window glass of the automobile while it is stopped at an immigration checkpoint.
3. **Overheard conversation:** A conversation where there is no REP from auditory intrusion such as a conversation between two people on a crowded street corner.
4. **Dog sniff:** A dog sniff of an object does not involve any intrusion; therefore allowing a dog to sniff an object to which it has lawful access is not a search. Dog sniffs of people raise additional issues (intrusion into personal space) and may be considered a search. An alert from a well-trained dog constitutes probable cause to believe there is contraband present.
5. **Abandoned property:** When a person chooses to give up a REP in an object, the courts will declare the object abandoned. Government's physical intrusion into abandoned property will not be a search because no one has a REP in the object. Abandonment must be voluntary (if property is discarded in response to a law enforcement agent's conduct, the agent's conduct must be lawful). Lost property is not abandoned property because you do not know if the person with REP in the object voluntarily discarded the item.
6. **Identification and travel documents:** Identification and travel documents are issued for the purpose of providing information to government officials. Thus, there is no REP in such documents. Looking at a lawfully obtained identification document is not a search. However, our efforts to retrieve identification documents might be considered a search (i.e., reach into a person's pocket to get the person's driver's license). Reading the driver's license is not a search, but the physical intrusion into the person's pocket is a search.

**Consent**

Warrant Required?	Suspicion Required?	Exception Policy	Consent Rule
NO	Zero Suspicion	The search occurs with the approval of the affected party so it is inherently reasonable	<ol style="list-style-type: none"> <li>1. SA may obtain consent that is voluntarily given and given by a person with authority to give consent.</li> <li>2. Consent is voluntarily given if it is the product of a free choice among lawful options.</li> <li>3. Search is limited to scope of consent.</li> </ol>

**Scope:** The person who gives consent sets the scope and duration of the search.  
The consenting party may revoke consent at any time. *See TDR 4A-3 "Ruses."*

Page 1606

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of the Freedom of Information and Privacy Act



Page 1607

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Page 1608

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**U.S. Immigration and Customs Enforcement  
Homeland Security Investigations Training**

**HSI Academy  
Legal Division**



**Fifth Amendment: Due Process**

**Instructor Guide**

**2105108**

**HSI Special Agent Training**

**6<sup>th</sup> Edition (2018)**

**ENFORCEMENT LAW COURSE**

## Fifth Amendment: Due Process

### INTRODUCTION

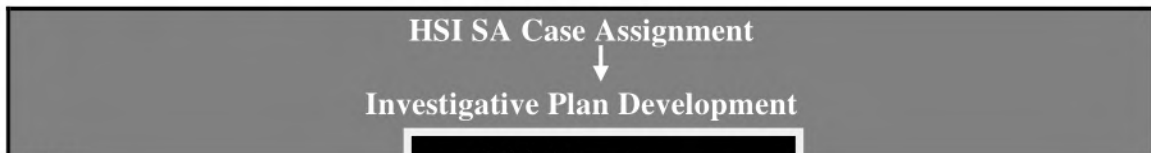
#### I. Motivation

In this lesson we will shift to a discussion of another Fifth Amendment protection – the Due Process Clause.

#### II. Review of the Past

The Self-Incrimination Clause of the Fifth Amendment prohibits compelling one from giving a statement against themselves in their own criminal case. This protection was meant to protect the accused from inherently coercive situations. The Miranda decision recognized the potentially inherently coercive nature of custodial interrogation so created the Miranda protocol which requires law enforcement to afford an accused Miranda Warnings prior to custodial interrogation.

#### III. Advance Organizer of Main Ideas



(b)(7)(E)

**IV. Agenda**

In this chapter, we will examine the Fifth Amendment’s Due Process Clause. We will then examine how courts apply the Due Process Clause Voluntariness Test. Finally, you will be given a past interview to determine if the statements taken were voluntary.

Demonstrations and examples will be provided throughout the lesson. The practice exercise at the end of the lesson is like the test questions on the legal examination.

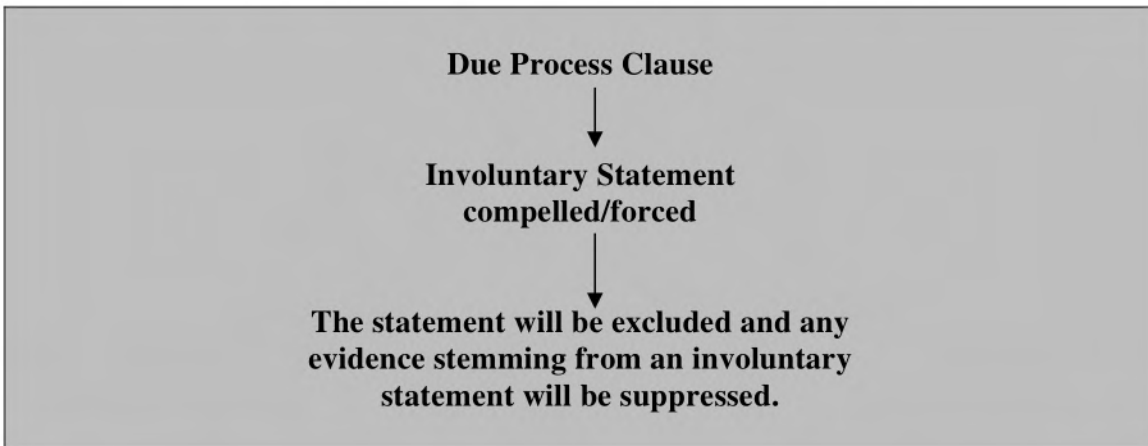
**V. Objectives**

**Terminal Performance Objective** – Given statements provided by subjects in interviews or as part of a scenario, determine if the statements provided by the subject were voluntary; as defined by the Supreme Court’s Due Process Voluntariness Test.

EPO	OBJECTIVE
1	Explain the Due Process Clause rule and protection.
2	Describe and apply the Due Process Clause Voluntariness Test.

**INSTRUCTION**

**I. Explain the Due Process Clause rule and protection. (EPO 1)**



- A. Due Process Clause – “No person shall be...deprived of life, liberty, or property, without due process of law...”
- B. Goal of Fifth Amendment’s Due Process Clause – To prevent fundamental unfairness in the **use** of evidence (*whether the evidence is true or false*) to

convict the subject. Statements that are the product of free and unconstrained choice should be admitted against the criminal defendant at trial, while statements that are the result of overbearing his will to resist violate the Fifth Amendment’s Due Process Clause and should be suppressed from trial. [*Culombe v. Connecticut*, 367 U.S. 568 (1961)].

C. Due Process Rule and Statements – The Supreme Court has determined that it is fundamentally unfair to **use** a statement that has not been **voluntarily** made or given to police. Therefore, if a statement is involuntarily made due to overbearing official conduct, the **use** of the statement to convict the defendant violates the Fifth Amendment’s Due Process Clause. [*See, Brown v. Mississippi*, 297 U.S. 278 (1936)].

D. Due Process impact

1. Protects all people (citizens and aliens).
2. Applies from the start of the criminal investigation to the conclusion of all appeals following a conviction.
3. Applies to physical evidence and statements.
4. The Due Process Clause impacts the actions of government only. The most outrageous behavior by a private party seeking to secure evidence against a defendant does not make that evidence inadmissible under the Due Process Clause.

E. Due Process Field Application

(b)(7)(E)

F. Demonstration

(b)(7)(E)

(b)(7)(E)

**II. Describe and apply the Due Process Clause Voluntariness Test. (EPO 2)**

- A. Courts determine whether law enforcement's actions were fundamentally unfair by way of the Due Process Clause Voluntariness Test.
- B. Due Process Voluntariness Test – When we look at all the circumstances surrounding the giving of the statement (*totality of the circumstances*) and we determine that the police wrung out that statement from the accused against his will, then the **use** of that statement to convict him violates the Due Process Clause. [*Culombe v. Connecticut*, 367 U.S. 568 (1961)].

**Instructor's Note:**

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

- C. Totality of the Circumstances – Remember the definition of the Due Process Voluntariness Test requires the courts to look at "all of the circumstances surrounding the giving of the statement." Of course, you know this refers to the concept of *totality of the circumstances*. The courts look at five primary factors to determine voluntariness.
1. Physical and mental state of the person [Factor 1].
  2. Maturity and education of the person [Factor 2].  
Familiar with criminal justice system
  3. The diverse pressures which sap a person's powers of resistance and self-control [Factor 3].
  4. Duration of the detention and interview, conditions of the detention and interview, and the location of the detention and interview [Factor 4].
  5. SA's attitude toward the subject [Factor 5].
- D. Subjective Test [*Dickerson v. U.S.*, 530 U.S. 428 (2000)]
1. The inquiry takes into consideration the totality of all the surrounding circumstances—*both* the characteristics of the accused *and* the details of the interrogation."

- 2. Understanding an interviewee’s mental state is a subjective endeavor and the mental state of involuntariness on which the due process question turns can never be affirmatively established other than circumstantially—that is, by inference.

E. Test Application: Indicate whether the factors would weigh for or against voluntariness.

**Instructor’s Note:** (b)(5); (b)(7)(E)  
 (b)(5); (b)(7)(E)

1. Factor 1: Physical and Mental State of the interviewee

a. (b)(5); (b)(7)(E)

(b)(5); (b)(7)(E) The person’s physical state would be a factor that the court would consider in determining whether a statement taken from this person now was voluntarily given. [*See, U.S. v. Hallford, 103 F. Supp. 3d 1 (2015)*].

Note: The court specifically remarked that the agents who conducted the interview in *Hallford* “amazingly made *no* effort before summoning him for an interview to determine either his medical status, or the status of his psychological condition, prior to requesting the interview.” Statement was deemed involuntary.

b. Mental State of Interviewee: (b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E) The person’s mental state would be a factor the court would consider in determining whether a statement taken from this person was voluntarily given.

Intellectual Capacity of the Interviewee: (b)(5); (b)(7)(E)  
 (b)(5); (b)(7)(E) The person's intellectual capacity would be a factor the court would consider in determining whether a statement taken from this person was voluntarily given.

2. Factor 2: Maturity and education of the person being interviewed

a. Maturity of the Interviewee: (b)(5); (b)(7)(E)  
 (b)(5); (b)(7)(E) (b)(5); (b)(7)(E) The person's maturity would be a factor the court would consider in determining whether a statement taken from this person was voluntarily given.

(b)(5); (b)(7)(E)  
 (b)(5); (b)(7)(E) The person's lack of maturity would be a factor the court would consider in determining whether a statement taken from this person was voluntarily given.

b. Education of the Interviewee: (b)(5); (b)(7)(E)  
 (b)(5); (b)(7)(E) (b)(5); (b)(7)(E) The person's educational background would be a factor the court would consider in determining whether a statement taken from this person was voluntarily given.

(b)(5); (b)(7)(E)  
 (b)(5); (b)(7)(E) The person's lack of educational background would be a factor the court would consider in determining whether a statement taken from this person was voluntarily given.

3. Factor 3: The diverse pressures which sap a person's powers of resistance and self-control

a. (b)(5); (b)(7)(E)  
 (b)(5); (b)(7)(E) The pressures employed by law enforcement will be a factor considered by the court in determining whether a statement taken from this person was voluntarily given.

b. (b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

Rule: Interrogating officers can make false representations concerning the crime or the investigation during questioning without always rendering an ensuing confession coerced. [See, *Frazier v. Cupp*, 394 U.S. 731 (1969)].

But the Supreme Court has said that “the test of voluntariness” is “whether the confession was extracted by any sort of threats or violence, or obtained by any **direct or implied promises**, however slight, or by the exertion of any improper influence...” so such a promise would result in an involuntary statement. [See, *Hutto v. Ross*, 429 U.S. 28 (1976); and, *Bram v. U.S.*, 168 U.S. 532 (1897)].

4. Factor 4: Duration, conditions, and location of the detention

a. Duration: (b)(5); (b)(7)(E)  
(b)(5); (b)(7)(E)

b. Condition: (b)(5); (b)(7)(E)  
(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)  
c. Location: (b)(5); (b)(7)(E)  
(b)(5); (b)(7)(E)

5. Factor 5: The manifest attitude of the police toward the subject

a. The method/techniques used may be considered by the court. For instance, (b)(5); (b)(7)(E)  
(b)(5); (b)(7)(E)



Example: (b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

Note: Failure to inform a defendant of the charges against him does not constitute coercion within the meaning of the Fifth Amendment [See, *Colorado v. Spring*, 479 U.S.564 (1987)].

Note: The courts will determine the answer to the Due Process issue (whether the statement is voluntary or involuntary) even though *Miranda* warnings were given and waived. It is only after the courts determine that the statement was voluntary that the courts will then determine whether the *Miranda* protocol was properly applied.

F. Demonstration

Cisneros-Hernandez was convicted of importing 100 kilograms of marijuana into the U.S. after being shipwrecked on San Nicolas Island (off California). He was interviewed by HSI SAs at a U.S. Navy facility. Agents spoke calmly and professionally throughout the interview. Only two agents conducted the interview. The interview lasted one hour. He was told he could contact the Mexican consulate or an attorney at any time. He declined both options. Before he was interviewed, Cisneros-Hernandez was given food, water, a blanket, and a place to sleep for several hours in a heated room. Medical personnel cleared him for questioning. One of the two interrogating DHS agents—who is also an Emergency Medical Technician—checked Cisneros-Hernandez again and found that he appeared to be in good condition; did not exhibit signs of dehydration or confusion; and was cooperative, coherent, and responsive to questioning. Cisneros-Hernandez claims he was handcuffed during the interview, but agents say otherwise.

**HSI did not overcome Cisneros-Hernandez’s will to resist and his waiver and confession were voluntary. U.S. v. Cisneros-Hernandez, 597 Fed. Appx. 933 (2015).**

G. Exercise:

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

**Instructor’s Note:**

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

**explain to the students that as they read the fact pattern make notes of the facts that might impact the court’s decision as to voluntariness of the statements given. The students can use the form at the end of the student guide to make notes. After 15**

**minutes, create four groups of six students. Instruct the groups to do the following:**

**Group 1 = Identify all facts that impact Factor 1 [Physical and Mental State of the Interviewee] and Factor 2 [Maturity and Education of the Interviewee]. Select a group representative to report out group findings.**

**Group 2 = Identify all facts that impact Factor 3 [Diverse Pressures]. Select a group representative to report out group findings.**

**Group 3 = Identify all facts that impact Factor 4 [Duration, Condition and Location of Interview]. Select a group representative to report out group findings.**

**Group 4 = Identify all facts that impact Factor 5 [Law Enforcement’s attitude toward Interviewee]. Select a group representative to report out group findings.**

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

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# **US Immigration and Customs Enforcement Homeland Security Investigations Training**

## **HSI Academy**



## **HSI Interviewing 211311**

## **Student Guide**

## **HSI Academy Courses**

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## Evidence Processing

### Motivation

Our job as criminal investigators is to provide prosecutors with a number of tools that meet the legal and ethical requirements for admission in court. The lessons you have taken in Ethical Behavior and Core Values have prepared you for the ethical challenges you will encounter in providing those tools. The lessons in law provide you with the constitutional framework necessary to legally obtain these tools so they are admissible in court.

This lesson provides the interviewing skills necessary to obtain information in an ethical and legal way. Remember, as sworn federal investigators, you are involved in the objective search for truth in every facet of our investigations, which starts in the critical process of interviewing.

### Objectives

#### Terminal Performance Objective (TPO)

**Conditions:** Given simulated Homeland Security Investigations scenarios,  
**Behavior:** conduct an interview after planning  
**Criterion:** i in a manner that complies with the 5th Amendment, the HSI Interviewing Handbook, and is necessary for managing human behavior in law enforcement situations.

#### Enabling Performance Objectives (EPOs)

- EPO 1:** Explain the different interview types and discuss interview planning and considerations.
- EPO 2:** Demonstrate documentation of interviews and summarize the HSI Custodial Recording Policy.
- EPO 3:** Discuss advanced rapport strategies and techniques.
- EPO 4:** (b)(7)(E)
- EPO 5:** Demonstrate (b)(7)(E) interview skills.
- EPO 6:** Demonstrate confrontational interviewing skills.
- EPO 7:** Identify informant interviewing skills.
- EPO 8:** Discuss the use of interpreters in interviews.

### Review of the Past

Prior to arrival at HSISAT, you received interview training through two primary means:

- CITP graduates have had ten hours of lecture about interviewing and five different labs (i.e., significant hours). This lesson builds on the basic interviewing mechanics you learned in CITP, and then concentrates on specific interviewing techniques, considerations, strategies, and applications thereof which you will be expected to master in your career as a HSI Special Agent.



- Individuals with previous law enforcement experience (“Add-on” interview classes) might not have had recent CITP experience – or any at all – but have probably practiced in the field.

You receive the legal background for conducting interviews during the legal lessons. Reference and reinforce the legal aspects as relevant. In general, the “Interviewing Handbook” provides the reinforcement.

## Advance Organizer of Main Ideas

Special Agents will conduct investigative interviews to solicit information to further an investigation, knowing that this information has a high probability of being used as evidence in a judicial proceeding. Interviews may involve subjects, witnesses, informants, victims, aliens facing formal deportation proceedings and other law enforcement personnel.

Most SAs, during their initial law enforcement training, learned law enforcement interview mechanics consisting of the basic five steps of law enforcement interviews. While important, this mechanical structure is only a basic foundation.

This lesson goes beyond the basic foundational skills to give you, a SA, a set of methods, techniques and theories that you can effectively use when conducting investigative or informational interviews.

## Agenda

In this lesson, you will discuss:

- Types of interviews, planning considerations
- Documentation of interviews and HSI Custodial Recording Policy
- Advanced rapport strategies and techniques
- (b)(7)(E) interviewing
- Confrontational interviewing
- Interviewing informants
- Use of interpreters in interviews

## INSTRUCTION

### Explanation

- A. EPO 1: Explain the different interview types and discuss interview planning and considerations.**
1. Interview Types and Purposes
    - a. Types of interviews
      - 1) Victim





(b)(7)(E)

2) Witness

(b)(7)(E)

3) Informant

(b)(7)(E)

4) Suspect

(b)(7)(E)



**Notes:**

2. Preparation for interviews

**Note:** Telephonic interviews require some of the same considerations as if planning for an in-person interview.

Planning incorporates:

a. Identifying the purpose of the interview and type of interview (i.e. victim, witness, subject, informant)

1) Interview parameters

(b)(7)(E)

b. (b)(7)(E)  
c.

d.

e. Interview attendees



- 1) (b)(7)(E)
  
  
  
  
  
  
  
  
  
  
- 2)

- f. Notetaking and report writing responsibilities
- g. Custody issues

- 1) Reminder: "Totality of circumstances" – what a reasonable person would consider in terms of a custodial interview
- 2) Appropriate legal advisements; e.g. Miranda, etc.

- h. Interview – (b)(7)(E)

(b)(7)(E)

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3. The Interview

### Five Step Law Enforcement Interview

Victim/Witness*	Suspect
1. Introduction	1. Introduction
2. Rapport	2. Rapport
3. Questioning (b)(7)(E)	3. Questioning (b)(7)(E)
4. Summary	4. Summary
5. Close	5. Close

\*Provide Victim/Witness pamphlet as appropriate.

a. Introduction Phase

1) Interviewer Identifies himself/herself

(b)(7)(E)

2) Identify the interviewee

- a) May be done verbally, if followed up by document verification, e.g., driver's license (DL), passport, etc.

3) Purpose of the interview

(b)(7)(E)



(b)(7)(E)

4) Begin the Establishment of Rapport

(b)(7)(E)

**Notes:**

b. Rapport Phase

(b)(7)(E)



(b)(7)(E)

**Notes:**

c. Questioning Phase

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(b)(7)(E)

[Redacted content]

d. Summary Phase

(b)(7)(E)

e. Closing Phase

(b)(7)(E)





(b)(7)(E)

**Notes:**

**B. EPO 2:** Demonstrate documentation of interviews and summarize the HSI Custodial Recording Policy.

1. Interview notes must be sufficient to prepare subsequent report of investigation, written statement, or affidavit.

a. Determine best strategy for note taking.

(b)(7)(E)

b. Take clear and concise notes.

(b)(7)(E)



(b)(7)(E)

c. Lies

- 1) (b)(7)(E) Government obligated to disclose exculpatory materials even if interviewee "corrects."
- 2) (b)(7)(E)

d. Basic Precepts: Interview notes/documentation

- 1) Tools used to build a case
- 2) Should supply information which, together with the statements and documents obtained during an investigation, facilitates preparation of a complete report (ROI).
- 3) SAs should maintain notes to be understood by another SA if case is reassigned.
- 4) When taking notes in shorthand or abbreviated form, SAs should promptly transcribe them.
- 5) Interview Notes are DISCOVERABLE.
- 6) All interview/interrogation notes MUST be PRESERVED in any case where criminal prosecution related to those notes is "even remotely possible." (See section 8.5 in the HSI Interviewing Techniques Handbook.)
  - a) Short Answer: Never destroy original notes
  - b) Original Notes should go to original casefile and be kept in the custody of the case agent (Interviewing Techniques Handbook HSI HB 17-04 Section 8.2(F)).
    - (1) Notes are then available for AUSA review.
    - (2) Original notes are available for discovery disclosure.
  - c) Agent who generated the notes should keep copies of the original notes for reference/review purposes in the event of future proceedings.

2. Advisement of Rights

- a. "Miranda" Warnings – procedural safeguards



- 1) Right to Remain Silent
- 2) Right to be informed that anything said could be
- 3) Right to an attorney: Government appointed if indigent
- 4) Right to consult with attorney prior to questioning
- 5) Right to have attorney present during questioning
- 6) HSI policy and legal considerations:
  - a) Use Statement of Rights – ICE Form 73-025 – when advising an individual of rights under Fifth Amendment and when completing a written statement.

b. Administrative Warnings

- 1) No Right against self-incrimination in administrative setting
  - a) Irrelevant if Custodial or Non-Custodial
  - b) No right to Miranda Warnings
- 2) CAVEAT: Questioning must remain in administrative realm; if questioning strays into criminal inquiries – Miranda will be required
- 3) 8 CFR 287: Administrative Warnings for Civil Removal
  - a) Clearly differs from Miranda
  - b) No right to remain silent
  - c) No right to government provided counsel

**Notes:**

(b)(7)(E)



f. Signed statements (See HB 17-04 Chapter 17 – entitled “Sworn Statements” but information there, some of which is highlighted below, applies to Signed Statements as well).

- 1) May be necessary at any time during the course of an investigation.
- 2) Always carry copies of Statement of Rights forms.
- 3) Document admissions and confessions with a written and signed statement – ensure the other SA witnesses the signed statement.
- 4) If unable to obtain statement, maintain detailed notes concerning the substance of relevant information developed during course of interviews.
- 5) When agents may obtain a signed statement, but develop additional information that is inappropriate to include in the statement, such as information obtained about unrelated criminal activity.

a) Notes should supplement the statement by documenting any pertinent information not included in the statement.

6) (b)(7)(E)

7) Formatting Considerations – (b)(7)(E)

(b)(7)(E)

8) Signed statements – do not obviate the need for notes, ROI, or other methods of capturing the interview. (b)(7)(E)

(b)(7)(E)

a) Overview – Formatting Considerations (Sec 17.3)

- (1) (b)(7)(E)
- (2)

b) Signed statement – preliminary Information (Sec 17.4)

c) Signed statement – body (Sec. 17.5)

(1) Corrections: Line through and have interviewee initial

(2) Do not use White-out or erase

(b)(7)(E)

(b)(7)(E)



- d) Signed statement – signing and witnessing (Sec. 17.6)
- e) Avoiding claims of alteration or substitution (Sec 17.7)

**Notes:**

- 9) Electronic recordings of interviews
  - a) Custodial interviews
    - (1) On May 12, 2014, the Department of Justice (DOJ) issued its “Policy Concerning Electronic Recording of Statements.” DHS issued Policy Statement 047-03, “Policy Concerning Electronic Recording of Statements in Federal Criminal Investigations,” which became effective on March 31, 2016. ICE then issued Policy Number 10087.1, “Electronic Recording of Custodial Statements in Federal Criminal Investigations,” dated July 15, 2016.

**Note:** HSI Special Agents MUST comply with all provisions of ICE Policy Number 10087.1.
    - (2) Custodial recording can be made covertly or overtly
      - (a) Preference: Video/Audio recording
      - (b) Minimum: Must be Audio recorded absent extenuating circumstances related to the lack of access to recording equipment
    - (3) Recording preamble
      - (a) The electronic recording of a custodial interview or interrogation should include a preamble that captures the following:



- i. Day, date, place and time the recording commenced
    - ii. Identity of individual being questioned
    - iii. Identity of interviewing Special Agents
    - iv. Names of all others present (include TFOs, other LEOs, interpreters, etc.)
    - v. Case number, if applicable
  - (b) Preamble should also state whether or not the individual has been previously advised of his/her rights.
    - i. Best Practice: rights notification and waiver captured during recorded interview
    - ii. If previous waiver, consider referencing prior waiver in recorded interview; e.g. I understand you were previously advised of your rights by SA Jones and that you agreed to speak with us. Is it still your desire to do so? (or words to that effect).
- (4) Avoid stopping/starting recording
  - (a) Whenever possible, after a custodial recording has been initiated, it should not be stopped until the interview is completed.
  - (b) If it is stopped (i.e. for long breaks or to afford the interviewee the opportunity to consult with counsel), the Special Agent should record the time the recording was paused, for what purpose, and when it was re-initiated.
- (5) Concluding the recording
  - (a) SAs should wait until the subject leaves the room, note the time, and state that the interview has been concluded.
- b) Non-Custodial interviews
  - (1) HSI Special Agents may record non-custodial interviews (whether a confrontational suspect interview or otherwise) at their own discretion unless prohibited by local policy.



- (2) General Rule: when recording non-custodial interviews, HSI Special Agents should follow the same procedures as for custodial interviews, described above and in ICE Policy Number 10087.1.
  - (a) Should document same preamble information
  - (b) Document prior rights advisement and waiver (if applicable)
- (3) Non-custodial interview recordings are subject to the same handling policies and procedures as custodial interview recordings
- (4) Can be overt or covert
  - (a) HSI policy recommends obtaining consent from interviewee for OVERT non-custodial interview recording
  - (b) Covert recordings of non-custodial interviews

(b)(7)(E)

- c) Preservation of electronic recordings
  - (1) SAs must ensure preservation of the original electronic recording.
  - (2) SAs must complete applicable chain of custody (6051S).
    - (a) Government generated
    - (b) "NOT IN SEACATS" (b)(7)(E)  
(b)(7)(E)
- d) ELSUR's are NOT REQUIRED for recorded custodial interviews.



- (1) ELSUR may be required for covert non-custodial interview recording.
- 10) Recorded statement taken pursuant to a summons or subpoena
  - a) Recorded statement provided by an interviewee whose attendance has been compelled by a summons, subpoena, or by a court order in support of such summons or subpoena
  - b) MUST include:
    - (1) Normal preamble matters
    - (2) That the statement is being provided pursuant to a summons or subpoena
    - (3) The object of the interview is to take testimony or receive other evidence concerning a matter that is material and relevant to the investigation of criminal or administrative violations of U.S. law.

**Notes:**

**C. EPO 3: Discuss advanced rapport strategies and techniques.**

- 1. Definition of rapport: harmonious, empathetic, relation, connection, accord or affinity to another

(b)(7)(E)

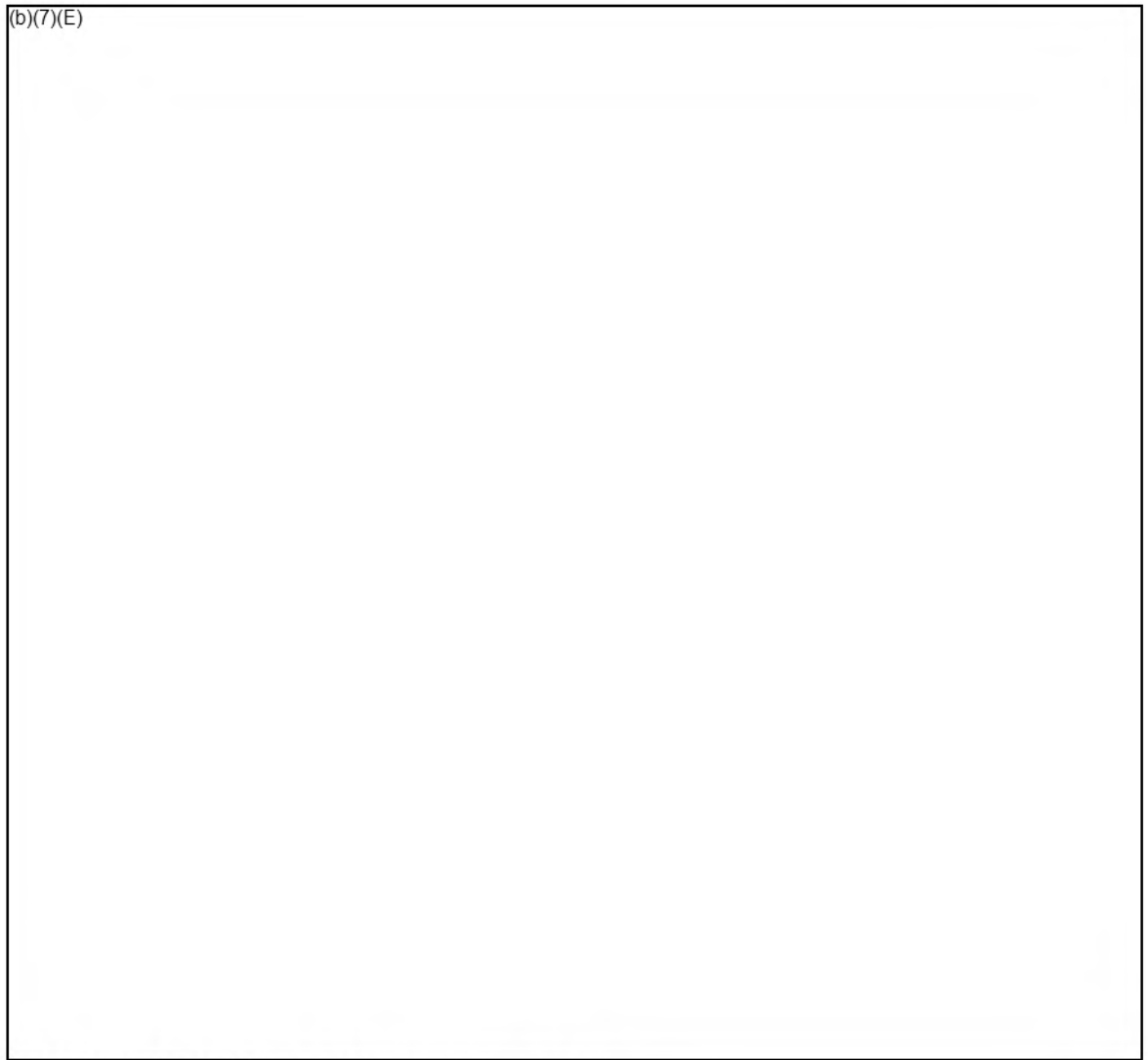
- 2. Rapport fundamentals

(b)(7)(E)





(b)(7)(E)



3. Methods for building and maintaining rapport

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**F. EPO 6: Demonstrate confrontational interviewing skills.**

1. Confrontational interviewing defined
  - a. An interview in which the interviewee, most frequently a suspect in a criminal investigation, is positively confronted with information, evidence, and declarative statements regarding the investigation by the interviewer, that are designed to elicit admissions concerning his/her criminal culpability.

- 1) Commonly referred to as an "Interrogation" when involving a

(b)(7)(E)

2. Key precepts of confrontational suspect interviews

(b)(7)(E)



(b)(7)(E)

**Notes:**

5. Theories and Methods of Interrogations

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## H. EPO 8: Discuss the use of interpreters in interviews.

1. Ascertaining the need for an interpreter
  - a. The need for an interpreter should be considered by HSI Special Agents whenever the individual to be questioned is a non-native English speaker
  - b. The interviewee's experience with English should be explored
    - 1) Length of time speaking English
    - 2) English speaking employment experience
    - 3) English speaking educational experience
    - 4) Interviewee's comfort using English in day-to-day conversation
  - c. Interviewee's experience and comfort with English should be documented in ROI.
  - d. Consider the need for an interpreter to conduct interview in interviewee's native language if there are concerns about the interviewee's ability to converse in simple English despite interviewee's willingness to do so.
    - 1) If interview will touch on complex or technical subject matter consider using an interpreter to preserve ability to explore all interview topics in both English and the interviewee's native language.
  - e. (b)(7)(E)
  - f. What kind of interpreter is required?
    - 1) Native language interpretation may not be enough as the ability to communicate in specific dialect(s) may be required.
  - g. Document in interview ROI the use of any interpreter as well as in what language (and dialect if any) the interview was conducted.
2. Role of interpreter
  - a. Remain subordinate to interviewer – a passive and impartial role.
  - b. Translate, word for word, only what is being said by both parties – no clarification or explanation of questions and answers.
  - c. Avoid distracting the interviewee in any way – may harm the interview process.
  - d. HSI Interviewing Technique Handbook suggests that the interpreters sit beside the interviewer or between, and to the side of, the parties.





- 1) Consider placing interpreter behind the interview subject if possible.
- 2) Eliminates distraction and removes barrier to interviewee eye contact with and orientation toward interviewer.

e. Key: (b)(7)(E)  
(b)(7)(E)

3. Preparation of interpreter – review of:
  - a. Review methods and procedures of this specific interview (away from the interviewee).
  - b. Reinforce that that Interviewer is in control of the interview
    - 1) Nothing can be said of which the Interviewer is not aware
  - c. Interpreter is conduit of information.
    - 1) No conversation with interviewee other than what interviewer says.
    - 2) Translates information without altering meaning from one language to another language.
    - 3) Translations/re-translations must be verbatim
      - a) Interpreter should repeat exact question or response into/from target language – verbatim
      - b) Interpreter should use 1st Person
        - (1) no “He said...” or “She said...” phrases
    - 4) Mimics interviewer’s voice inflection and gestures.
    - 5) Never edit any part of interview, no matter how trivial the remark.
4. Preparing to use interpreter
  - a. Think of what needs to be known.
  - b. Prepare clear, concise, simply stated, jargon-free questions.
5. Document interpreter’s effectiveness:
  - a. Interviewee and interpreter understand each other
  - b. Specific language and dialect used in interview
  - c. Interviewee advised at beginning of interview to tell interviewer if they do not understand the interpreter
  - d. Repeated confirmation throughout interview that interviewee and interpreter understand each other



6. Potential problems with using interpreters
  - a. Easy to miss shades of meaning. Interviewer must instruct interpreter about duties – act solely as a voice – and strictly limit his/her speech.
  - b. If necessary: interviewer may substitute another interpreter during interview. Repeating certain questions with the new interpreter can check the veracity and cooperativeness of interviewee, and the ability and performance of the first interpreter.

## Demonstration

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## CONCLUSION

### Summary of Main Ideas

As stated in Section 4.12 of the HSI Interviewing Technique Handbook, an interview is a conversation conducted to obtain information, and may involve anyone: witnesses, informants, cooperating individuals, and the suspect. No investigation is complete until every person (witnesses or suspects) has been interviewed. Proficiency in interviewing increases the reliability of an interview's outcome. It can also minimize surprise testimony later in the prosecutorial process.

During the course of any investigation, SAs interview or interrogate individuals for a variety of reasons. For example, to:

- Establish if a crime actually occurred and, if so, the facts of the crime
- Verify or link prior information received from other individuals involved in an investigation or from physical evidence collected
- Secure additional evidence
- Discover details of other offenses
- Develop further intelligence

Statements gathered during interviews are powerful valuable tools in an investigation.

(b)(7)(E)

### Integration

Interviewing is a powerful investigative method to obtain information. It is useful at any time during an investigation and can trigger investigations. (b)(7)(E)

(b)(7)(E)

### Objectives

After completing this lesson, students are now able to conduct an interview after planning in a manner that complies with the 5th Amendment, the HSI Interviewing Handbook, and is necessary for managing human behavior in law enforcement situations.

In this lesson we:

- Explained the different interview types and discuss interview planning and considerations.
- Demonstrated documentation of interviews and summarized the HSI Custodial Recording Policy.





- Discussed advanced rapport strategies and techniques.
- (b)(7)(E)
- Demonstrated (b)(7)(E) skills.
- Demonstrated confrontational interviewing skills.
- Identified informant interviewing skills.
- Discussed the use of interpreters in interviews.

## Motivation

Your job as criminal investigators is to provide prosecutors with tools that meet the legal and ethical requirements for admission in court. The lessons you have taken in Ethical Behavior and Core Values prepared you for the ethical challenges you will encounter in providing those tools. The lessons in law provided you with the constitutional framework necessary to legally obtain these tools so they are admissible in court.

This lesson provided the interviewing skills necessary to obtain information in an ethical and legal framework. Remember, as sworn federal investigators, you are involved in the objective search for truth in every facet of our investigations, which starts in the critical process of interviewing.

## Test or Final Activity

The test for the interviewing lesson occurs during the practical exercises. The interviews are part of a weighted final examination. Instructors will evaluate students by using an interview checklist to ensure that they adequately perform the important aspects of the five-step interview process.



PLAN FOR SUSPECT INTERVIEW

(b)(7)(E)



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**Arrest Authority**

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# Homeland Security Investigations (HSI)

## Arrest Authority

Arrest – a critical component of your job is arresting individuals who have committed a crime

# Homeland Security Investigations (HSI)

## Investigative Phases

HSI SA Case Assignment



Investigative Plan Development

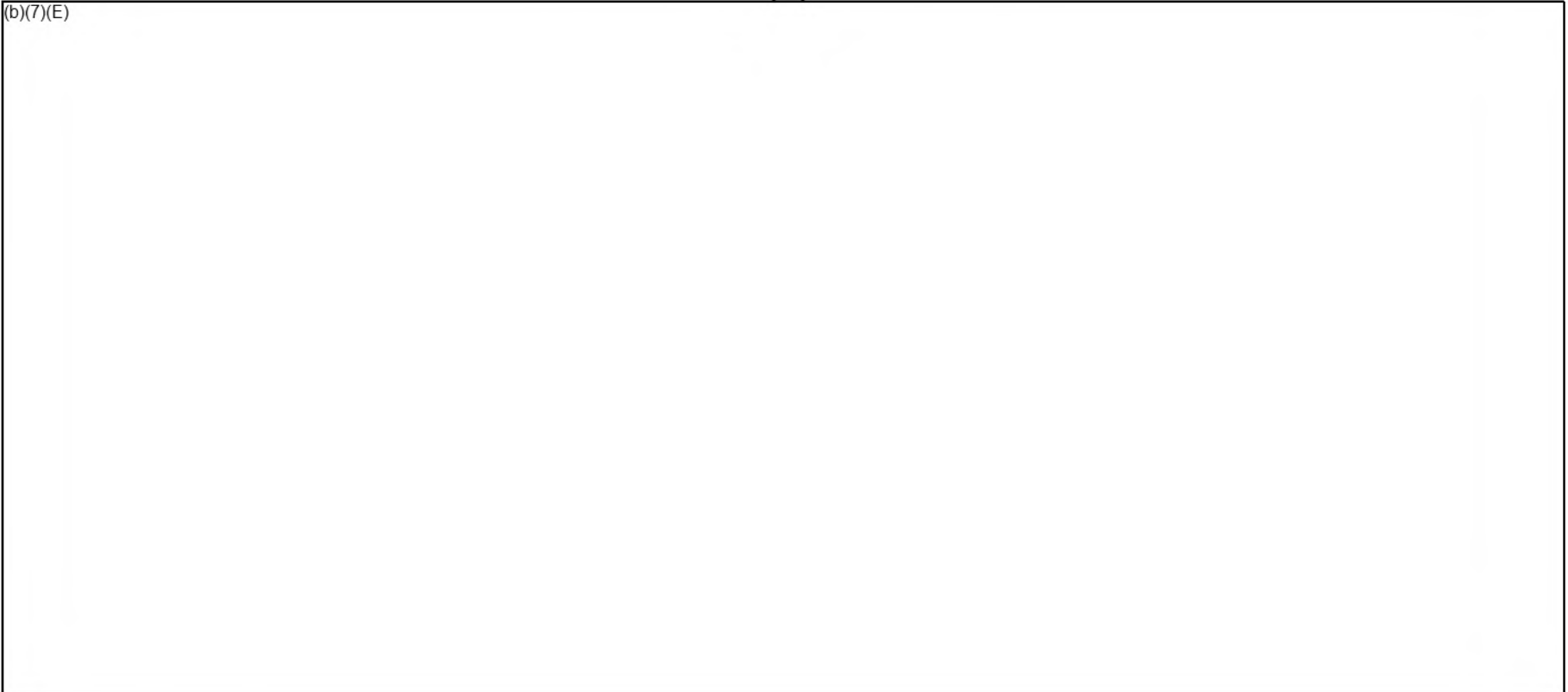
(b)(7)(E)



## Investigative Phases, cont'd



(b)(7)(E)



# Homeland Security Investigations (HSI)

## Agenda

- Arrest authority Demonstration Practice activity

# Homeland Security Investigations (HSI)

## Terminal Performance Objective

Given a law enforcement scenario with the arrest of a subject, determine arrest authority in accordance with Titles 8 and 19 of the U.S. Code.



# Homeland Security Investigations (HSI)

## Enabling Performance Objectives

- Explain federal authorities. Explain state arrest authorities.

# Homeland Security Investigations (HSI)

## Federal Arrest Authorities

**19 U.S.C. § 1589a: An “officer of the customs” (as defined by 19 U.S.C. § 1401) is authorized to: Carry a firearm. Execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States. Make an arrest without a warrant for any offense against the United States committed in the officer’s presence, or Make an arrest without a warrant for a felony, cognizable under the laws of the United States committed outside the officer’s presence if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony.**

# Homeland Security Investigations (HSI)

## Federal Arrest Authorities, cont'd

**8 U.S.C. § 1357(a)(2) – An “immigration officer” is authorized to make a warrantless arrest of an alien who: In his presence or view, enters or attempts to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens; or is in the United States, if he has reason to believe (probable cause) that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest.**

# Homeland Security Investigations (HSI)

## Federal Arrest Authorities, cont'd

**8 U.S.C. § 1357(a)(4) – An “immigration officer” is authorized to make a warrantless arrest of: Anyone who has committed an immigration-related felony; If he has probable cause to arrest; and The person is likely to escape before a warrant can be obtained.**

# Homeland Security Investigations (HSI)

## Federal Arrest Authorities, cont'd

**8 U.S.C. § 1357(a)(5)(A) – An “immigration officer” is authorized to: Arrest anyone for committing any federal crime; in the agent’s presence; where the person is likely to escape before obtaining a warrant; but only if the agent was performing immigration duties at the time of the arrest. The general arrest authority provided by § 1387(a)(5)(B) has not been implemented.**

# Homeland Security Investigations (HSI)

## Warrantless Arrests

All Arrests must be based on PC	Immigration Felony	Immigration Misdemeanor/Administrative	Non-Immigration Felony	Non-Immigration Misdemeanor
If act occurs in presence of agent	Warrantless Arrest	Warrantless Arrest	Warrantless Arrest	Warrantless Arrest
If act occurs outside agent's presence	Warrantless Arrest		Warrantless Arrest	

See Student Guide p. 5

# Homeland Security Investigations (HSI)

## Demonstration

(b)(7)(E)



# Homeland Security Investigations (HSI)

## State Arrest Authority

- States grant state arrest authority to a HSI  
SAPeace Officer Status Limited Arrest Authority  
Private Citizens Arrest ICE Policy permits Arrests  
for outstanding state felony warrants Responses to  
lawful requests for assistance from state or local  
law enforcement officers Arrests for serious violent  
crimes

**See Student Guide p. 6**





# Homeland Security Investigations (HSI)

## Example

(b)(7)(E)

# Homeland Security Investigations (HSI)

## Practice

(b)(7)(E)

# Homeland Security Investigations (HSI)

## Summary

Federal arrest authority1. 19 U.S.C. § 1589a – An “officer of the customs”2. 8 U.S.C. § 1357(a)(2) – An “immigration officer”3. 8 U.S.C. § 1357(a)(4) – An “immigration officer”4. 8 U.S.C. § 1357(a)(5)(A) – An “immigration officer”

State arrest authority1. State Peace Officer status, state statute, and citizen’s arrest2. ICE Policy – Responding to State Crimes, Directive Number 13-01, 5-30-2013.

# Homeland Security Investigations (HSI)

## Looking Ahead

- This lesson addressed Special Agents' arrest authorities. The next lesson will discuss Special Agents' post-arrest obligations.



Protecting the Borders Against Illicit Trade, Travel, and Finance

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

**III. Student Practice**

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

## CONCLUSION

### I. Summary of Main Ideas

- A. Two protections found in the Fifth Amendment that impact the way in which the SA takes statements from individuals for use in a criminal prosecution: (1) Due Process Clause and (2) Self-Incrimination Clause.
  - 1. Compelled statements are inadmissible because of both protections.
  - 2. Voluntary Statements are inadmissible if collected in violation of *Miranda*.
- B. The goal of the Due Process Clause is to prevent unfairness in the use of evidence to convict a subject.
- C. Courts will look at the totality of the circumstances (five factors) when applying the Due Process Voluntariness Test.
  - 1. Physical and mental state of the person.
  - 2. Maturity and education of the person.
  - 3. The diverse pressures which sap a person's powers of resistance and self-control.
  - 4. Duration of the detention and interview, conditions of the detention and interview, and location of the detention and interview.
  - 5. SA's attitude toward the subject.

### II. Integration

In the previous lesson, we examined the self-incrimination protection provided by the Fifth Amendment – the Self-Incrimination Clause, and we discussed how to collect a statement for use in a criminal prosecution in compliance with the Self-Incrimination Clause.

In this lesson we examined the protections provided by the Fifth Amendment and focused on the Due Process Clause. More specifically, we discussed how the Due

Process Clause is applied when determining if the statements provided by subjects are voluntary or involuntary, and whether or not they are permissible in court.

**III. Motivation**

As a SA, the statements you collect from subjects and witnesses are important to the case the attorneys build. But the way you collect those statements could adversely impact the decisions by the court. Thus, it is imperative that you conduct yourself within the parameters of the Fifth Amendment, especially where the Due Process Clause is concerned.

**IV. Objectives**

**Terminal Performance Objective:** Given statements provided by subjects in interviews or as part of a scenario, determine if the statements provided by the subject were voluntary; as defined by the Supreme Court’s Due Process Voluntariness Test.

EPO	OBJECTIVE
1	Explain the Due Process Clause rule and protection.
2	Describe and apply the Due Process Clause Voluntariness Test.

**V. Test of Final Activity**

You will be tested on your ability to determine the voluntariness of an individual’s statement on the legal multiple-choice exam after the Sentencing Guidelines lesson. However, your ability to address this issue will be tested each time you take a statement from a subject.

**5<sup>th</sup> DP Lesson Student Drive Reference Index**

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)
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# **Homeland Security Investigations**

**Fifth Amendment: Due Process**

**HSI Special Agent Training**

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# Homeland Security Investigations (HSI)

## How Do You Lawfully Collect a Statement?

- Governed by laws and policies Must be in compliance with the Due Process Clause

# Homeland Security Investigations (HSI)

## Review of the Past

- Self-Incrimination Clause Prohibits compelling one from giving a statement against themselves in their own criminal case Meant to protect the accused from inherently coercive situations Miranda Decision Recognized the potentially inherently coercive nature of custodial interrogation Created the Miranda protocol

# Homeland Security Investigations (HSI)

## Investigative Phases

HSI SA Case Assignment



Investigative Plan Development

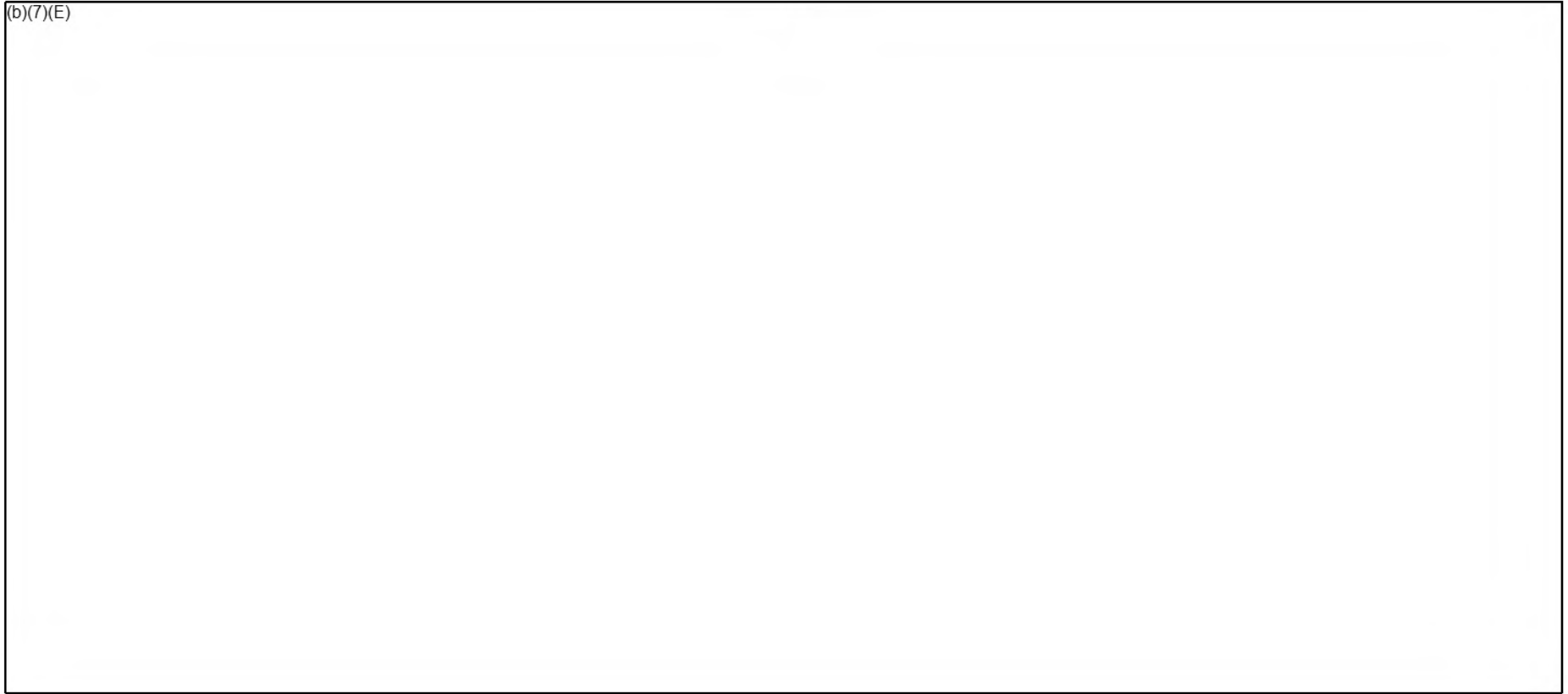


(b)(7)(E)

## Investigative Phases, cont'd



(b)(7)(E)



# Homeland Security Investigations (HSI)

## Agenda

- Protections found in the Fifth Amendment How courts analyze Fifth Amendment issues Due Process Clause How courts apply Due Process Clause Voluntariness Test Interview to determine if statements taken were voluntary Practice activity

# Homeland Security Investigations (HSI)

## Terminal Performance Objective

Given statements provided by subjects in interviews or as part of a scenario, determine if the statements provided by the subject were voluntary as defined by the Supreme Court's Due Process Voluntariness Test.

# Homeland Security Investigations (HSI)

## Enabling Performance Objectives

- Explain the Due Process Clause rule and protection. Explain the Due Process Clause Voluntariness Test.



# Homeland Security Investigations (HSI)

## Right of Due Process

- Due Process Clause – “No person shall be...deprived of life, liberty, or property, without due process of law...”Goal – To prevent fundamental unfairness in the use of evidence (whether the evidence is true or false) to convict the subject. Due Process Rule and Statements – The Supreme Court has held that it is fundamentally unfair to use a statement that has no been voluntarily made or given to police.

# Homeland Security Investigations (HSI)

## Due Process Rule and Statements

- Protects all people (citizens and aliens) Applies from the start of the criminal investigation to the conclusion of all appeals following conviction Applies to physical evidence and statements Due Process Clause: impacts the actions of the government only

# Homeland Security Investigations (HSI)

## Due Process Field Application

- Evidence in the form of Statements – Statements used in a fundamentally unfair way violate the Due Process Clause. Example:

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

**Example scenario in Student Guide**

# Homeland Security Investigations (HSI)

## Demonstration

(b)(5); (b)(7)(E)

# Homeland Security Investigations (HSI)

## Due Process Clause Voluntariness Test

- Courts determine whether law enforcement's actions were fundamentally unfair by way of the Due Process Clause Voluntariness Test. Due Process Voluntariness Test – When we look at all the circumstances surrounding the giving of the statement (totality of the circumstances) and we determine that the statement from the accused was wrung out against his will, then the use of that statement to convict him violates the Due Process Clause.



# Homeland Security Investigations (HSI)

## Totality of the Circumstances

Courts look at five primary factors to determine voluntariness:

- Physical and mental state of the person
- Maturity and education of the person
- The diverse pressures which sap a person's powers of resistance and self-control
- Duration of the detention and interview, conditions of the detention and interview, and location of the detention and interview
- SA's attitude toward the subject

# Homeland Security Investigations (HSI)

## Demonstration

Cisneros-Hernandez was convicted of importing 100 kilograms of marijuana into the U.S. after being shipwrecked on San Nicolas Island (off California). He was interviewed by HSI SAs at a U.S. Navy facility. Agents spoke calmly and professionally throughout the interview. Only two agents conducted the interview. The interview lasted one hour. He was told he could contact the Mexican consulate or an attorney at any time. He declined both options. Before he was interviewed, Cisneros–Hernandez was given food, water, a blanket, and a place to sleep for several hours in a heated room. Medical personnel cleared him for questioning. ....

# Homeland Security Investigations (HSI)

## Student Practice:

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

Read the (b)(6); (b)(7)(C) fact pattern and make notes regarding voluntariness

Group 1: Identify all facts that impact Factors 1 and 2

Group 2: Identify all facts that impact Factor 3

Group 3: Identify all facts that impact Factor 4

Group 4: Identify all facts that impact Factor 5

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)



# Homeland Security Investigations (HSI)

## Summary

- Two protections found in the 5th Amendment impact the way in which the SA takes statements from individuals for use in a criminal prosecution: (1) Due Process Clause and (2) Self-Incrimination Clause  
Due Process Clause applied when determining if subject's statements are voluntary or involuntary and whether they are permissible in court  
Goal of Due Process Clause is to prevent unfairness in the use of evidence to convict a subject: Courts will look at the totality of the circumstances (five factors) when applying the Due Process Voluntariness Test



Protecting the Borders Against Illicit Trade, Travel, and Finance

# **US Immigration and Customs Enforcement OFFICE OF TRAINING AND TACTICAL PROGRAMS**

## **ICE Academy**



## **HUMAN SMUGGLING / HUMAN TRAFFICKING INVESTIGATIONS**

**11800**

### **Student Guide**

### **HSI Special Agent Training**

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## Human Smuggling and Human Trafficking

### Motivation

Human trafficking is a form of modern day slavery. HSI places a priority on human trafficking investigations and recognizes victims of human trafficking as crime victims.

In human smuggling cases individuals participate voluntarily by entering into a contract with alien smuggling organizations in attempting to enter the U.S. illegally.

But often there are areas where these two distinctly different crimes overlap. A person willingly brought to the U.S. as a smuggled alien, only to become subjected to some unwanted obligation, such as the use of force or coercion to collect smuggling fees or when promised employment turns into forced labor or commercial sex.

HSI agents conduct criminal investigations into each type of offense; and understanding the differences, and similarities, is essential.

### Objectives

#### Terminal Performance Objective (TPO)

**Conditions:** Given a set of case-related facts indicating human smuggling or human trafficking,

**Behavior:** determine investigative and victim-support actions

**Criterion:** in accordance with legal requirements, agency policy, and agency resources.

#### Enabling Performance Objectives (EPOs)

**EPO #1:** Explain the elements of human smuggling crimes.

**EPO #2:** Define human smuggling and related terms and identify indicators to establish violations of human smuggling statutes.

**EPO #3:** Identify the different methods used by Alien Smuggling Organizations (ASOs) to bring aliens into the U.S., including by land, sea and air, both through the Ports of Entry (POEs) and by crossing the borders at other than POEs.

**EPO #4:** Determine investigative approaches and actions to investigate human smuggling cases.

**EPO #5:** Explain the elements of human trafficking crimes; and define the differences between sex trafficking and labor trafficking/forced labor.

**EPO #6:** Define human trafficking and identify indicators to establish violations of human trafficking statutes.

**EPO #7:** Identify common methods of operation utilized by human trafficking organizations.

**EPO #8:** Identify investigative approaches and actions to investigate each type of human trafficking case.

**EPO #9:** Identify various programs within HSI designated to provide assistance to



**EPO #10:** identified victims of human trafficking.  
Handle an alien smuggling load from initial encounter to writing the criminal complaint.

## Review of the Past

In the discussion of investigations of human smuggling and human trafficking cases, recall and apply the techniques of investigation, evidence collection, search constraints, and requirements for probable cause covered in previous lessons. The one main distinction between Human Smuggling and Human Trafficking crimes compared to other investigations in HSI is that the primary evidence is a human being.

**Human smuggling** – The surreptitious entry of people into the U.S., facilitated by a third party, involving individuals willingly traveling to the U.S. in deliberate evasion of immigration laws. Smuggled aliens are critical to an investigation as material witnesses, possibly requiring testimony in court. They may be placed in parole status and released into the U.S. for a short time. After testimony, witnesses are generally placed in removal proceedings.

**Human trafficking** – The recruitment, harboring, transportation, provision, obtaining, advertising, maintaining, patronizing or soliciting of a person (regardless of citizenship or immigration status), by means of threat or use of force, fraud, or coercion, subjecting victims to involuntary servitude, peonage, debt bondage, or slavery for the purpose of sexual exploitation or forced labor. Victims of trafficking must be protected and may also be witnesses. Trafficking crimes can be transnational or domestic, involving U.S. citizens or foreign national victims. Foreign nationals are eligible for certain types of immigration relief, such as Continued Presence or a T or U visa if they cooperate with the investigation and prosecution.

As you have seen from previous case scenarios and examples, ICE HSI works jointly with many other agencies to ensure our national security and to investigate violations related to federal, state and local crimes. Human smuggling and trafficking is no exception, as our partnerships and work on multi-jurisdictional task forces identify both the perpetrators and victims of these crimes.

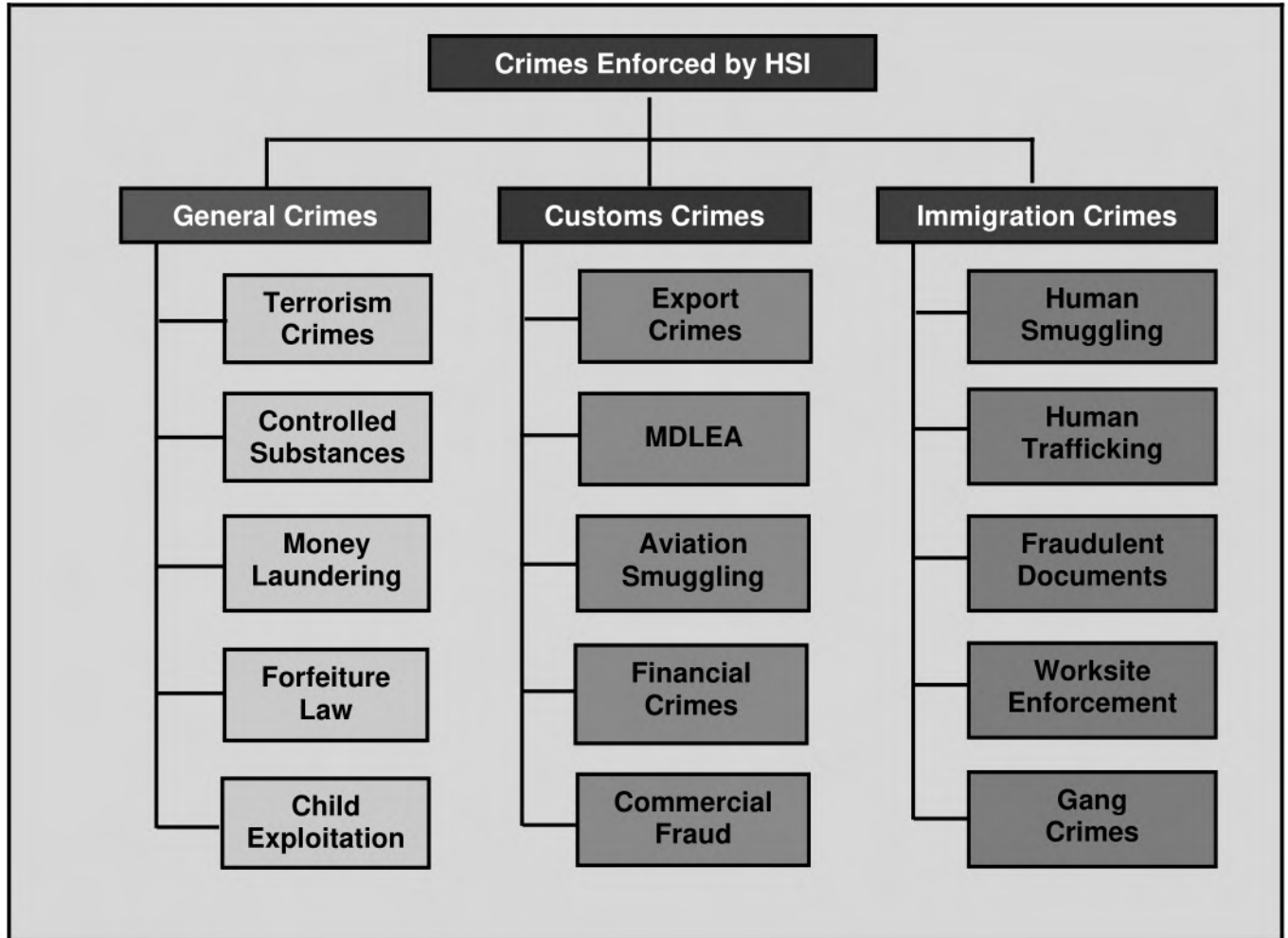
Although this lesson is called Human Smuggling and Human Trafficking, it is important to remember that smuggling and trafficking are different offenses.

- Human smuggling is the importation of people willingly traveling into the United States involving deliberate evasion of immigration laws. Human trafficking is:
- Human trafficking is:
  - 1) Sex trafficking , involving the recruitment, harboring, transportation, provision or obtaining of a person to use for a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained the age of 18; or;
  - 2) Labor trafficking and forced labor involving the recruitment, harboring, transportation provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.



In general terms, smuggling is transportation-based, a crime against the U.S., while trafficking is exploitation-based, a crime against the person.

## Advance Organizer of Main Ideas



## Agenda

The first part of the lesson covers specific topics pertaining to human smuggling:

- Elements of human smuggling crimes and human smuggling investigations
- Definition of human smuggling and indicators of human smuggling violations
- Methods used for human smuggling and investigative approaches
- Demonstrations and examples

The second part of the lesson talks about human trafficking:

- Elements of human trafficking crimes and human trafficking investigations

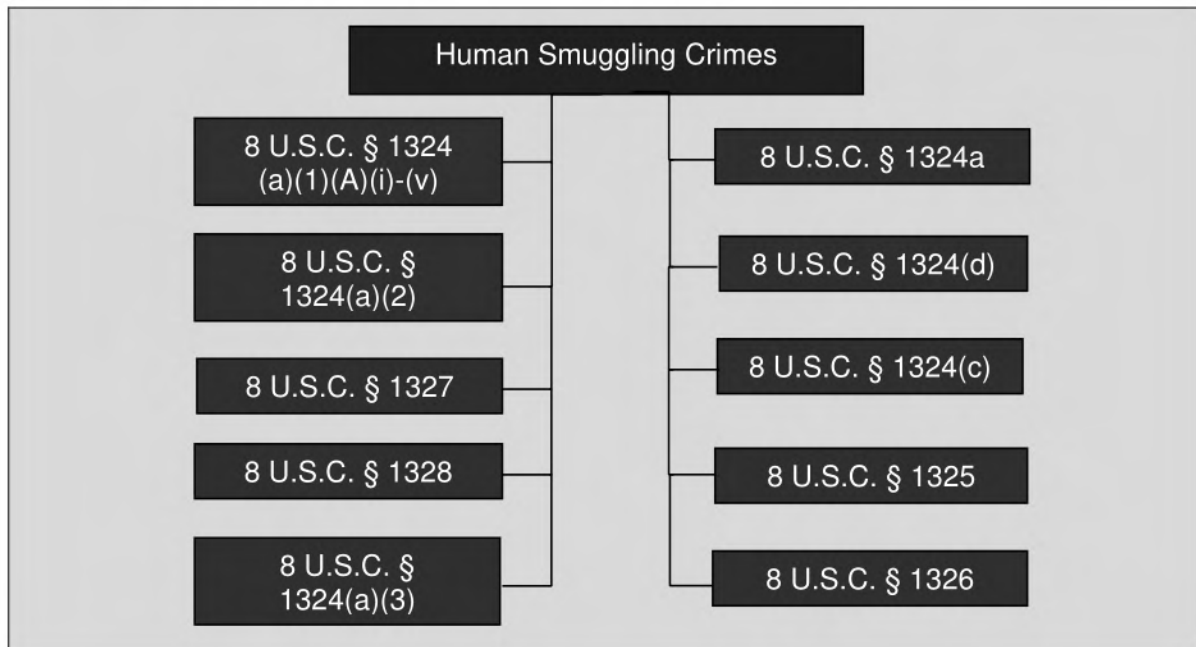


- Definition of human trafficking and indicators of human trafficking violations
  - Methods used for human trafficking and investigative approaches
  - Ways SAs can provide appropriate assistance to identified victims
  - Handling an alien smuggling load
  - Demonstrations and examples
- After in-depth discussion of human smuggling and human trafficking crimes and investigations, the instructor will lead a guided demonstration. At the end, you will respond to a set of questions in the Student Practice and Practice Scenarios.

## INSTRUCTION

### Explanation

- A. EPO #1: Explain the elements of human smuggling crimes.**  
See Student Share Drive (SDR) HS/HT-3 Definitions of Human Smuggling and Human Trafficking, December 13, 2004.



The statutes pertaining to human smuggling crimes include:

- 8 U.S.C. § 1324 (a)(1)(A)(i) thru (a)(1)(A)(v) – Bringing in an alien at an undesignated location, transporting illegal aliens within the United States, concealing/harboring illegal aliens within the United States, and encouraging/inducing aliens to come to, enter, or reside in the United States illegally.
- 8 U.S.C. § 1324 (a)(2) – Bringing an unauthorized alien to the United States at a designated location or port of entry (POE).



- 8 U.S.C. § 1327 – Aiding or assisting certain aliens to enter.
- 8 U.S.C. § 1328 – Importation of alien for immoral purpose.
- 8 U.S.C. § 1324 (a)(3) – Knowingly hiring aliens who were smuggled into the United States and lack employment authorization.
- 8 U.S.C. § 1324a – Unlawful employment of aliens.
- 8 U.S.C. § 1325 (d) – Immigration-related entrepreneurship fraud.
- 8 U.S.C. § 1325 (c) – Marriage Fraud.
- 8 U.S.C. § 1325 – Improper entry by alien.
- 8 U.S.C. § 1326 – Reentry of removed alien.

Refer to full text of statutes for detail regarding elements of the crime.

There are multiple crimes found within 8 U.S.C. § 1324. This lesson addresses seven of those crimes.

1. **8 U.S.C. § 1324(a)(1)(A)(i)** – Bringing in alien at improper time or place.
  - a. Elements:
    - 1) Knowing that a person is an alien
    - 2) Brings or attempts to bring such person to the United States
    - 3) At a place other than that designated by the United States (e.g., “through the hills” at a desolate spot along the border where no POE exists).
  - b. Comments:
    - 1) The immigration status of the alien who is brought to the United States in violation of 8 U.S.C. § 1324(a)(1)(A)(i) is not an element of proof. However, the alien’s immigration status becomes relevant, as discussed below, with other violations of 8 U.S.C. § 1324 (a)(1)(A).

**Note:** *The term “immigration status” refers to whether the alien has received prior authorization to enter or reside in the United States. Even a lawful permanent resident (LPR) alien of the United States might be smuggled into this country “through the hills.” Likewise, an alien with prior official authorization to come to the United States (e.g., a valid/unexpired nonimmigrant visa) could also be smuggled into this country “through the hills.” Neither instance gives rise to a defense to the crime of alien smuggling.*
    - 2) In order to prosecute the individual who brought the alien to the U.S. at an unauthorized location, the Government need not prove that an adverse action (i.e., Removal) was taken against the alien who was brought to the U.S., nor would such alien’s receipt of relief from removal prevent criminal prosecution of the smuggler.





- c. Example: An alien smuggler guides a group of 10 aliens across a wooded and desolate section of the northern border of the U.S.

d. **Penalty** imposed for each alien in respect to whom such a violation occurs is:

- 1) <10 years and/or fine under title 18, USC; or
- 2) <20 years and/or fine under title 18, USC, if during and in relation to such violation the person causes serious bodily injury [as defined in 18 U.S.C. § 1365] or places in jeopardy the life of any person; or
- 3) If the act results in the death of any person, then death, or imprisonment for any term of years or for life, fined under 18, USC or both.

**Notes:**

2. **8 U.S.C. § 1324(a)(1)(A)(ii)** – Transporting an alien in furtherance of the alien’s illegal presence in the United States.

a. Elements:

- 1) Knowingly or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law
- 2) Transports, moves or attempts to transport or move such alien within the United States
- 3) By means of transportation or otherwise
- 4) *In furtherance of* such violation of the law.

b. Comments:

- 1) The immigration status of the alien who is transported is a critical fact. As an element of the offense, the Government must prove that the defendant knew the alien came to, entered, or remained in the U.S. *in violation of law*, or the defendant acted in reckless disregard of that fact.
- 2) The transportation must be “in furtherance” of the alien’s coming to, entry, or remaining in the United States in violation of law.



c. Example: (b)(7)(E)

(b)(7)(E)

d. **Penalty** imposed for each alien in respect to whom such a violation occurs is:

- 1) <5 years and/or fine under title 18, United States Code; or
- 2) <10 years and/or fine under title 18, United States Code if done for commercial advantage or private financial gain; or
- 3) <20 years and/or fine under title 18, United States Code, if during and in relation to such violation the person causes serious bodily injury [ as defined in 18 U.S.C. § 1365] or places in jeopardy the life of any person; or
- 4) If the act results in the death of any person, then death, or imprisonment for any term of years or for life, fined under 18, USC or both.

**Notes:**

3. **8 U.S.C. § 1324(a)(1)(A)(iii)** – Concealing, Harboring, or Shielding illegal aliens.

- a. Elements:
- 1) Knowingly or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law
  - 2) Conceals, harbors, or shields from detection or attempts to conceal, harbor, or shield from detection such alien
  - 3) In any place, including any building or any means of transportation.



b. Comments:

- 1) (b)(7)(E) [redacted]  
(b)(7)(E) [redacted] As an element of the offense, the Government must prove that the defendant knew the alien came to, entered, or remained in the U.S. in violation of law, or the defendant acted in reckless disregard of that fact.
- 2) Most jurisdictions have determined that “harboring” is defined as providing (or offering) a known illegal alien a secure haven, a refuge, a place to stay in which authorities are unlikely to be seeking him. Preventing detection need not be the defendant’s sole purpose, but should be an integral part of the overall scheme. *See, United States v. Campbell, 770 F. 3d 556 (7<sup>th</sup> Cir October 21, 2014).*
- 3) The term “any place” is very broad in scope.

c. Example: (b)(7)(E) [redacted]

(b)(7)(E) [redacted]

d. **Penalty** imposed for each alien in respect to whom such a violation occurs is:

- 1) <5 years and/or fine under title 18, United States Code; or
- 2) <10 years and/or fine under title 18, United States Code if done for commercial advantage or private financial gain; or
- 3) <20 years and/or fine under title 18, United States Code, if during and in relation to such violation the person causes serious bodily injury [ as defined in 18 U.S.C. § 1365] or places in jeopardy the life of any person; or
- 4) If the act results in the death of any person, then death, or imprisonment for any term of years or for life, fined under 18 USC or both.



Notes:

- 4. **8 U.S.C. § 1324(a)(1)(A)(iv)** – Encouraging or inducing an alien to come to, enter, or reside in the United States in violation of law:
  - a. Elements:
    - 1) Encourage or induce an alien to come to, enter, or reside in the United States
    - 2) Knowing, or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.
  - b. Comments: (b)(7)(E)
 

(b)(7)(E) As an element of the offense, the Government must prove that the defendant knew or acted in reckless disregard of the fact that the alien’s coming to, entry, or residence is or would be in violation of law.
  - c. Example: (b)(7)(E)
 

(b)(7)(E)
  - d. Penalty: imposed for each alien in respect to whom such a violation occurs is:
    - 1) <5 years and/or fine under title 18, United States Code; or
    - 2) <10 years and/or fine under title 18, United States Code if done for commercial advantage or private financial gain; or
    - 3) <20 years and/or fine under title 18, United States Code, if during and in relation to such violation the person causes serious bodily injury [ as defined in 18 U.S.C. § 1365] or places in jeopardy the life of any person; or
    - 4) If the act results in the death of any person, then death, or imprisonment for any term of years or for life, fined under 18 USC or both.



**Notes:**

5. **8 U.S.C. § 1324(a)(1)(A)(v)(I) and § 1324(a)(1)(A)(v)(II)** – Conspiracy to commit alien smuggling, aiding or abetting alien smuggling.
- a. Any person who engages in any conspiracy to commit a violation of 8 U.S.C. §1324(a) (1)(A)(i) thru (iv), or
  - b. Any person who aids or abets the commission of 8 U.S.C. §1324(a)(1)(A)(i) thru (iv).

- c. **Penalty** imposed for each alien in respect to whom such a violation occurs is:
- 1) **Aids or Abets** – <5 years and/or fine under title 18, United States Code; or
  - 2) **Conspiracy** – <10 years and/or fine under title 18, United States Code. [Note that this is double the penalty for the general Federal crime of conspiracy, 18 U.S.C. § 371, so the alien smuggling conspiracy charge should be used when applicable.]; or
  - 3) **Conspiracy and Aids or Abets** – <20 years and/or fine under title 18, United States Code, if during and in relation to such violation the person causes serious bodily injury [ as defined in 18 U.S.C. § 1365] or places in jeopardy the life of any person; or
  - 4) **Conspiracy and Aids or Abets** – If the act results in the death of any person, then death, or imprisonment for any term of years or for life, fined under title 18, United States Code, or both.

**Notes:**



6. 8 U.S.C. § 1324 (a)(2) – Bringing or attempting to bring an alien to the United States knowing or in reckless disregard of the fact that the alien has not received prior official authorization to come to, enter, or reside in the United States.

a. Elements:

- 1) Knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States
- 2) Brings, or attempts to bring such alien to the United States in any manner whatsoever.

b. Comments: As with 8 U.S.C. § 1324 (a)(1)(A)(i), in order to prosecute the individual who brought or attempted to bring the alien to the U.S., the Government need not prove that an adverse action (i.e., Removal) was taken against the alien, nor would such alien’s receipt of relief from removal prevent criminal prosecution of the smuggler.

c. Example (b)(7)(E)

(b)(7)(E)

d. **Penalty** imposed for each alien in respect to whom such a violation occurs is:

- 1) <1 years and/or fine under title 18, United States Code; or
- 2) Where the offense is committed with the intent or reason to believe the alien will commit an offense against the U.S. or any state punishable by imprisonment of greater than 1 year, the result will be: fined under title 18, United States Code, and imprisonment (1st or 2nd violation = 3 to 10 years; 3rd or more violation = 5 to 15 years) or both; or
- 3) Where the offense is done for the purpose of commercial advantage or private financial gain, the result will be: fined under title 18, United States Code, and imprisonment (1st or 2nd violation = 3 to 10 years; 3rd or more violation = 5 to 15 years) or both; or
- 4) An offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated POE, the result will be: fined under title 18, United States Code, and imprisonment (1st or 2nd violation = <10 years; 3rd or more violation = 5 to 15 years) or both.



**Notes:**

7. **8 U.S.C. § 1327 – Aiding or assisting certain aliens to enter the United States.**

a. Elements:

- 1) Knowingly aids or assists any alien inadmissible under
  - a) INA § 212(a)(2) convicted of an *aggravated felony* **or**
  - b) INA § 212(a)(3) *security and related grounds*, other than subparagraph (E) thereof
- 2) To enter the United States **or**
- 3) Connives or conspires with any person or persons to allow, procure or permit any such alien to enter the United States.

b. Penalty: <10 years and/or fine.

- c. Example: Mr. Flores–Garcia has admitted aiding and assisting an undocumented alien named Gabriel Hernandez to enter the United States. Flores–Garcia also admits that, as an undocumented alien, he knew Gabriel Hernandez was inadmissible to the United States. Flores–Garcia asserts, however, a complete lack of knowledge concerning the Flores–Garcia's criminal record and the government concedes that it cannot prove otherwise.

Hernandez had in fact been previously been convicted of possession of a narcotic substance for sale, an aggravated felony [See, INA § 101(a)(43)(B)], making him “inadmissible” to the United States. INA § 212(a)(2) states in relevant part: “any alien convicted of . a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21), is inadmissible.”

The government assumes the burden to prove that: 1) Flores–Garcia knowingly aided or assisted an alien to enter the United States; 2) Flores–Garcia knew that the alien was inadmissible to the United States; and 3) the alien was inadmissible under INA § 212(a)(2) insofar as being an alien inadmissible under such section has been convicted of an aggravated felony. Proof that the defendant knew of alien's prior



conviction or inadmissibility under INA § 212(a)(2) is not required. **U.S. v. Flores-Garcia, 198 F.3d 1119 C.A.9 (Cal.) 2000.**

**Notes:**

8. **8 U.S.C. § 1328** – Importation of alien for immoral purpose.

a. Elements

1) Whoever directly or indirectly,

- a) Imports or attempts to import into the United States
- b) Holds or attempts to hold any alien for any such purpose in pursuance of such illegal importation **or**
- c) Keeps, maintains, controls, supports, employs, or harbors in any house or other place

2) Any alien

3) For the purpose of prostitution or for any other immoral purpose

b. Comments: The phrase “immoral purpose” has not been defined, but is generally accepted by courts to mean prostitution or a role as a concubine (sexually subservient mistress). The trial and punishment of offenses under this section may be in any district to or into which such alien is brought in pursuance of importation by the person or persons accused, or in any district in which a violation of any of the provisions of this section occurs. In all prosecutions under this section, the testimony of a husband or wife shall be admissible and competent evidence against each other.

c. Penalty: <10 years and/or fine

d. Example: James Clark, a Lubbock, Texas minister, met Carolyn Njau in August 2005 while on a trip to Kenya. Clark approached Njau, who was a prostitute at the time, in a hotel coffee shop. Clark falsely claimed to be a Texas Tech University professor and a minister. After chatting with Njau, Clark invited her to his hotel room on the pretense of continuing their conversation. There, he touched her, and he had her pose while he took a picture of her genitals.

In November 2005, Clark returned to Texas, promising Njau that his church might sponsor her education in the United States. When Njau informed Clark that she would be unable to afford her airfare, he agreed





to pay it but suggested that she could pay him back by “serv[ing]” his friends, which she “took . . . to imply sexual services in return for money.”

Upon her arrival in the United States in January 2006, Clark controlled, threatened, and sexually assaulted Njau. Ultimately, Njau confided in a school administrator, who contacted authorities. Clark was prosecuted and convicted for importation of an alien for prostitution or other immoral purposes. **U.S. v. Clark, 582 F.3d 607 (C.A.5 Tex. 2009).**

9. **8 U.S.C. § 1324 (a)(3)** – Knowing employment of smuggled aliens

a. Elements:

- 1) During any 12-month period
- 2) Knowingly hires for employment
- 3) At least 10 individuals
- 4) With actual knowledge that the individuals are **both**

- a) Unauthorized aliens [as defined in INA § 274A(h)(3)] **and**
- b) Were also brought into the United States in violation of 8 U.S.C. § 1324(a).

b. Penalty is <5 years and/or fine.

c. Example: N(b)(7)(E)

(b)(7)(E)

**Notes:**



10. **8 U.S.C. § 1324a** – Unlawful employment of aliens

a. Elements:

- 1) It is unlawful for a person or other entity to hire, or to recruit, or refer for a fee, for employment in the United States any alien.
- 2) Knowing the alien is an unauthorized alien (as defined in 8 U.S.C. § 1324a(h)(3)) with respect to such employment.

b. Comments: The term “unauthorized alien” means, with respect to the employment of an alien at a particular time, that the alien is not at that time either an alien lawfully admitted for permanent residence (LPR), or an alien authorized to be so employed by law or the Secretary of Homeland Security (previously the Attorney General).

c. Example: (b)(7)(E)

(b)(7)(E)

d. **Penalty** imposed for each alien in respect to whom such a violation occurs is:

- 1) Criminal Penalty – For engaging in a pattern or practice of violations a person shall be fined not more than \$3,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned <6 months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.
- 2) The statute also provides for civil fines for such violations as well as for other violations involving hiring persons without performing background checks.

e. 8 U.S.C. § 1324(a)(3) – Knowing employment of **smuggled aliens** distinguished from 8 U.S.C. § 1324a – Unlawful employment of **aliens**.

- 1) A non-immigrant pleasure visa holder cannot be convicted of 1324(a)(3), but can be convicted of 1324a because, although lawfully present, such an alien is not allowed to work while in the United States on such a visa.



**Notes:**

11. **8 U.S.C. § 1325 (d)** – Immigration-related entrepreneurship fraud

a. Elements:

- 1) Knowingly establishes a commercial enterprise
- 2) For the purpose of evading any provision of the immigration laws.

b. **Penalty <5 years and/or fine.**

- c. Example: Mr. Matsumaru is a licensed attorney who practices law in Hawaii. Matsumaru helps Japanese clients obtain visas from the United States government. He brags that he has almost a 100% success rate in securing visas for his clients. Matsumaru's success rate is a function of an elaborate, multi-faceted strategy devised to defraud the United States government, and at the same time, to swindle his unwitting foreign clients. First, Matsumaru advertises in a Japanese language publication as a bilingual immigration attorney capable of helping Japanese citizens obtain visas from the United States Department of State ("State Department"). Japanese citizens desirous of living in the United States who see Matsumaru's advertisement contact him. Matsumaru explains that in order to qualify for a particular visa [E-2 – Treaty Investor], a Japanese citizen must invest a substantial sum of money in a United States company.

To effectuate the investment, Matsumaru instructs the Japanese citizens to wire money from their Japanese bank accounts to newly formed corporate bank accounts in Hawaii. Instead of using these funds to invest in United States companies, however, Matsumaru, without authorization, diverts most of the money to his own personal uses. Then, after creating the paper trail supposedly demonstrating his clients' investments in viable United States companies, Matsumaru endeavors to secure visas for his clients. He prepares application materials for his clients to submit to the United States consulate in Japan. In these materials, Matsumaru makes several false representations to the United States government about the history of his clients' investments and about the formation of their United States enterprises. Relying on these false representations, the government has granted visas to Matsumaru's clients. **U.S. v. Matsumaru, 244 F.3d 1092 C.A.9 (Hw) 2001.**



12. **8 U.S.C. § 1325(c)** – Marriage fraud.

a. Elements:

- 1) Knowingly enters into a marriage
- 2) For the purpose of evading any provision of the immigration laws.

b. **Penalty** <5 years and/or <\$250,000 fine.

13. **8 U.S.C. § 1325** – Improper entry by alien.

a. Elements

- 1) Any alien who
  - a) enters or attempts to enter the United States **at any time or place** other than as designated by immigration officers, **or**
  - b) **eludes examination or inspection** by immigration officers, **or**
  - c) attempts to enter or obtains entry to the United States by a **willfully false or misleading representation** or the willful concealment of a material fact.

b. Examples:

- 1) **Improper time or place:** (b)(7)(E)  
(b)(7)(E)
- 2) **Eludes inspection:** (b)(7)(E)  
(b)(7)(E)
- 3) **Willfully false or misleading:** (b)(7)(E)  
(b)(7)(E)



(b)(7)(E)

- c. Criminal penalty imposed for such a violation is:
- 1) 1st Conviction – <6 months and/or fine under title 18, United States Code
  - 2) Subsequent Convictions – <2 years and/or fine under title 18, United States Code
  - 3) Civil Penalties exist under [8 U.S.C. § 1325(b)] and are in addition to and not in lieu of any criminal or other civil penalties that may be imposed. Civil Penalties under [8 U.S.C. § 1325(b)] include:
    - a) \$50 to \$250 for each entry if not previously subject to a civil penalty under 8 U.S.C. § 1325(b)
    - b) \$100 to \$500 for each entry where the alien has been previously subject to a civil penalty under 8 U.S.C. § 1325(b)

**Notes:**

14. **8 U.S.C. § 1326** – Reentry of removed alien.

- a. Any alien who (1) has been denied admission, excluded, deported, or removed, or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter; (2) enters, attempts to enter, or is at any time found in, the United States unless:
  - 1) Prior to embarkation outside of U.S. or application for admission from a foreign contiguous territory, the Attorney General expressly consent to alien's reapplying for admission; or
  - 2) With respect to an alien previously denied admission and removed, such alien establishes he was not required to obtain advanced consent under the law.
- b. Example: Mr. Pina-Jaime was born in Mexico and is not a United States citizen. He was deported from the United States 4 times, but the Immigration and Naturalization Service ("INS") gave him special permission to enter for one day so that he could attend a child custody hearing for his daughter. The INS explicitly "[w]arned" Pina-Jaime, in



writing, that he was “authorized to stay in the U.S. only” for the day of September 17, 1997, and that “[t]o remain past this date, without permission from immigration authorities, is a violation of the law.” In spite of this, Pina-Jaime voluntarily chose to remain in the United States, and did not return to Mexico. His parole automatically terminated.

On February 15, 2000, the INS learned that Pina-Jaime was still in this country. He was charged with being a deported alien found in the United States. He contended that he did not violate 8 U.S.C. § 1326(a)(2) because he had the Attorney General's consent to enter the United States on September 17, 1997, and he did not enter the country illegally.

The court concluded that the government satisfied its burden in this case by proving that Pina-Jaime knowingly and willfully committed the act of staying in the United States without permission of the Attorney General following his one-day parole into this country. **U.S. v. Pina-Jaime, 332 F.3d 609 C.A.9 (Cal.) 2003.**

- c. Penalties: There are numerous different possibilities:
- 1) The statute calls for imprisonment of various terms and fines which are in most instances imposed under title 18, United States Code.
  - 2) In most cases the statute calls for imprisonment and/or fine, while in one case the statute mandates fine and imprisonment.
  - 3) Generally speaking, the punishment is dependent upon the alien's criminal record prior to such removal or upon the underlying basis for the removal action.



**Demonstration/Examples:**

(b)(7)(E)

**B. EPO #2: Define human smuggling and related terms and identify indicators to establish violations of human smuggling statutes.**

1. Definition of human smuggling
  - a. The surreptitious entry of people into the U.S., facilitated by a third party, involving individuals willingly traveling to the U.S., in deliberate evasion of immigration laws.



- b. Smuggling may be motivated by profit, religion, politics, or family interest.
- c. Statutes governing this offense are contained within 8 USC § 1324.
- d. Human smuggling related terms:
  - 1) **ASO:** Acronym for alien smuggling organization, a criminal group that works together for the purpose of smuggling or trafficking aliens into the U.S. from abroad.
  - 2) **Pollo:** Spanish for “chicken,” a slang term for a smuggled alien.
  - 3) **Coyote or pollero:** Southwest border slang for an alien smuggler.
  - 4) **Guide:** Person who guides aliens across the border and shows them the way to the pickup or “load” vehicle or stash house.
  - 5) **Driver:** Also known as the “load driver” – Driver of load vehicle who takes aliens to stash house from the vicinity of the border or from stash house further into interior of the U.S.
  - 6) **Pollo list:** A ledger of the smuggled aliens in a load or who owe the smugglers money on their smuggling fee
  - 7) **Bajadores:** Southwest border slang term for bandits or “rip off crews” who steal aliens from other smugglers
  - 8) **Drop house or stash house:** The location where alien smugglers harbor aliens while awaiting receipt of smuggling fees or onward transportation of the aliens to their next or final destination.
  - 9) **Pocket trash:** Pieces of paper containing writing, receipts or other evidence of travel, contact numbers and addresses containing information or intelligence value found in the wallets of smugglers or smuggled aliens
  - 10) **Material witnesses:** Aliens or other subjects that become witnesses and are willing to provide information or testimony against alien smuggling organizations and/ or their members
  - 11) **OTM:** Abbreviation for “Other Than Mexican,” and therefore cannot be voluntarily returned to Mexico
  - 12) **Snakehead:** A member of a Chinese alien smuggling organization
  - 13) **Load:** Group of smuggled aliens when they are in the process of being transported into or through the U.S.
  - 14) **Load vehicle:** Vehicle used to transport aliens from a pickup site inside U.S. borders on to a stash house or to their further destination in the U.S.
  - 15) **Sponsor:** Relative or friend of smuggled alien responsible for paying the smuggled alien's transportation/smuggling fees
  - 16) **Reporting party:** Family member or friend of a smuggled alien who contacts law enforcement, usually to report that a relative is being held hostage by smugglers

2. Investigatory leads may come from:

(b)(7)(E)





(b)(7)(E)

3. Indicators of human smuggling

(b)(7)(E)

4. Investigation, prosecutorial focus, and penalties

- a. Investigations focused on identifying and disrupting criminal organizations involved in bringing in, transporting, and harboring illegal aliens.
- b. Sentencing range can vary greatly, based upon numerous factors, such as the number of aliens being smuggled, whether the smugglers are repeat offenders or if crime results in severe injury or death to a smuggled alien.

Notes:



**C. EPO #3 Identify the different methods used by Alien Smuggling Organizations (ASOs) to bring aliens into the U.S., including by land, sea and air, both through the Ports of Entry (POEs) and by crossing the borders at other than POEs.**

1. Methods of Operation.

(b)(7)(E)

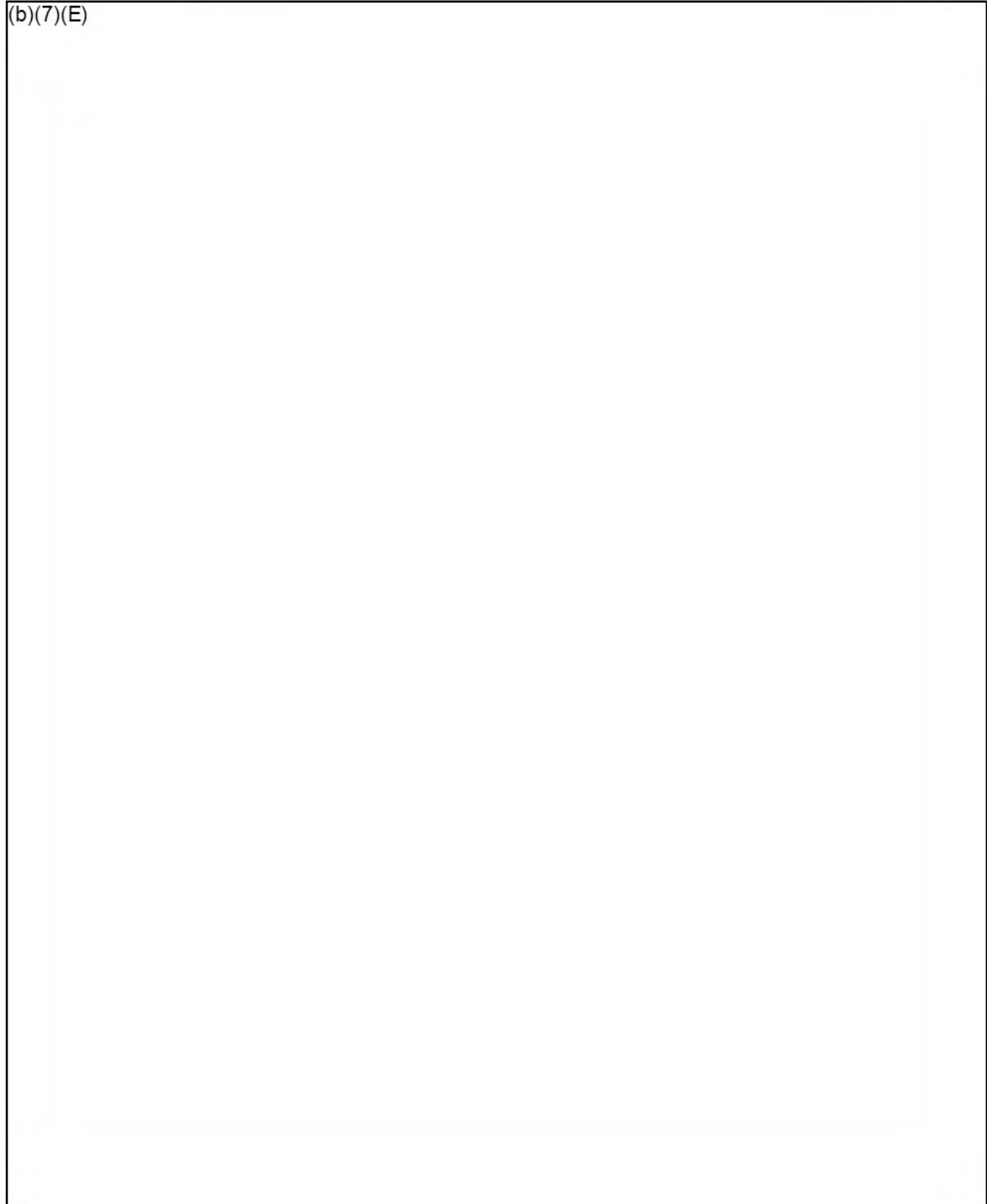


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Notes:

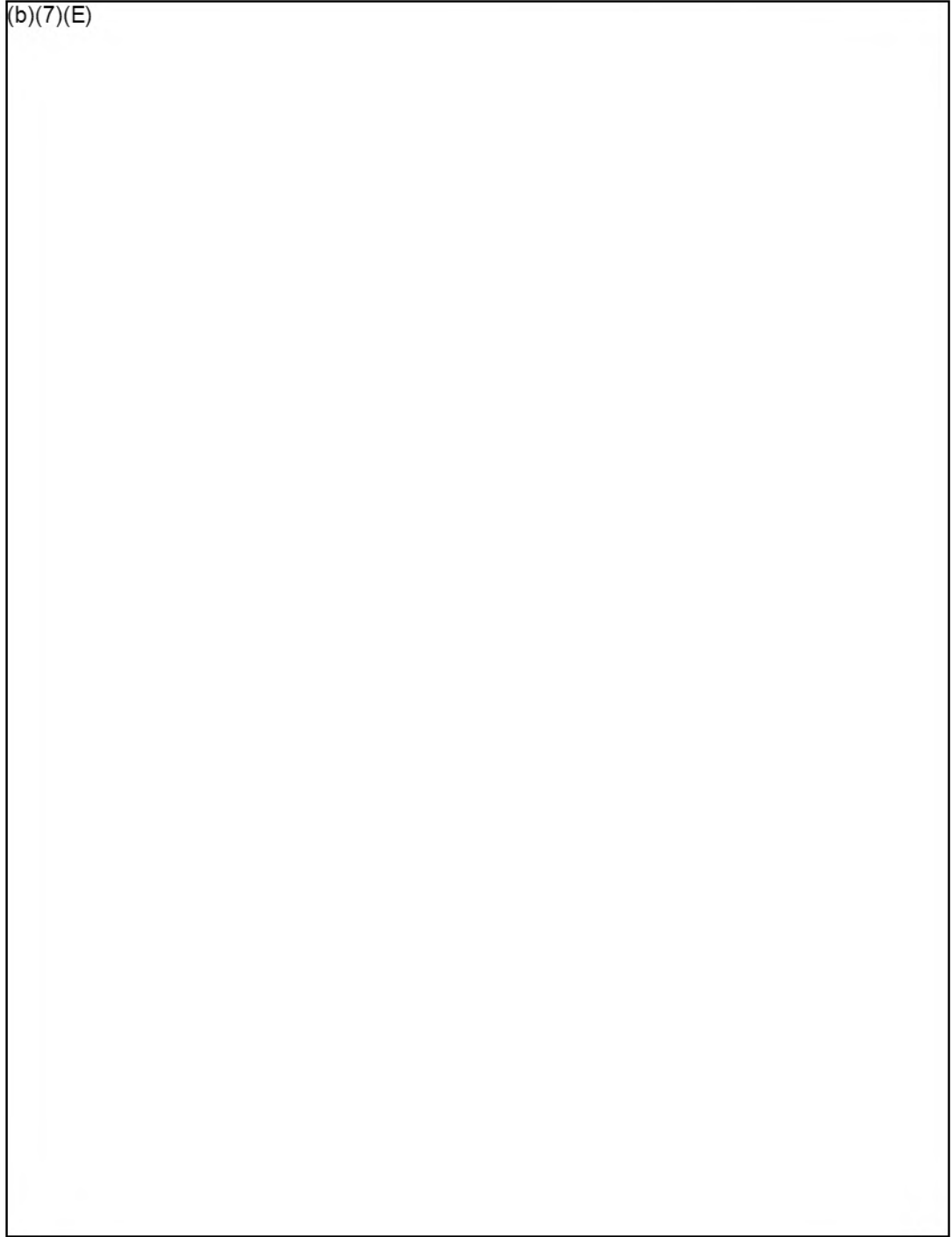


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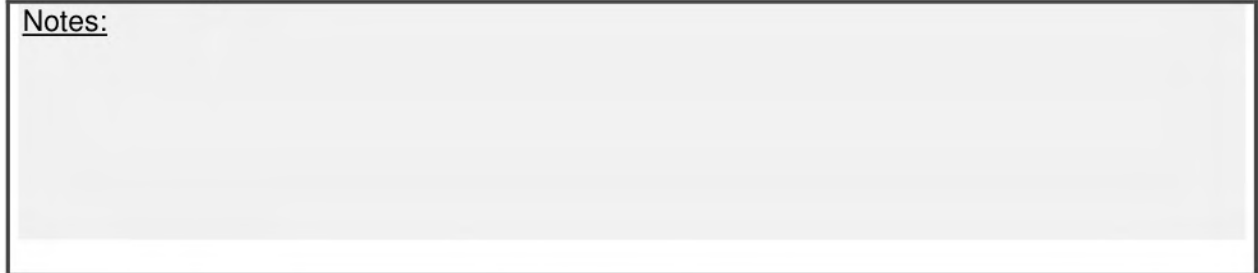




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**Notes:**

- D. EPO #4: Determine investigative approaches and actions to investigate human smuggling cases.**

(b)(7)(E)



(b)(7)(E)



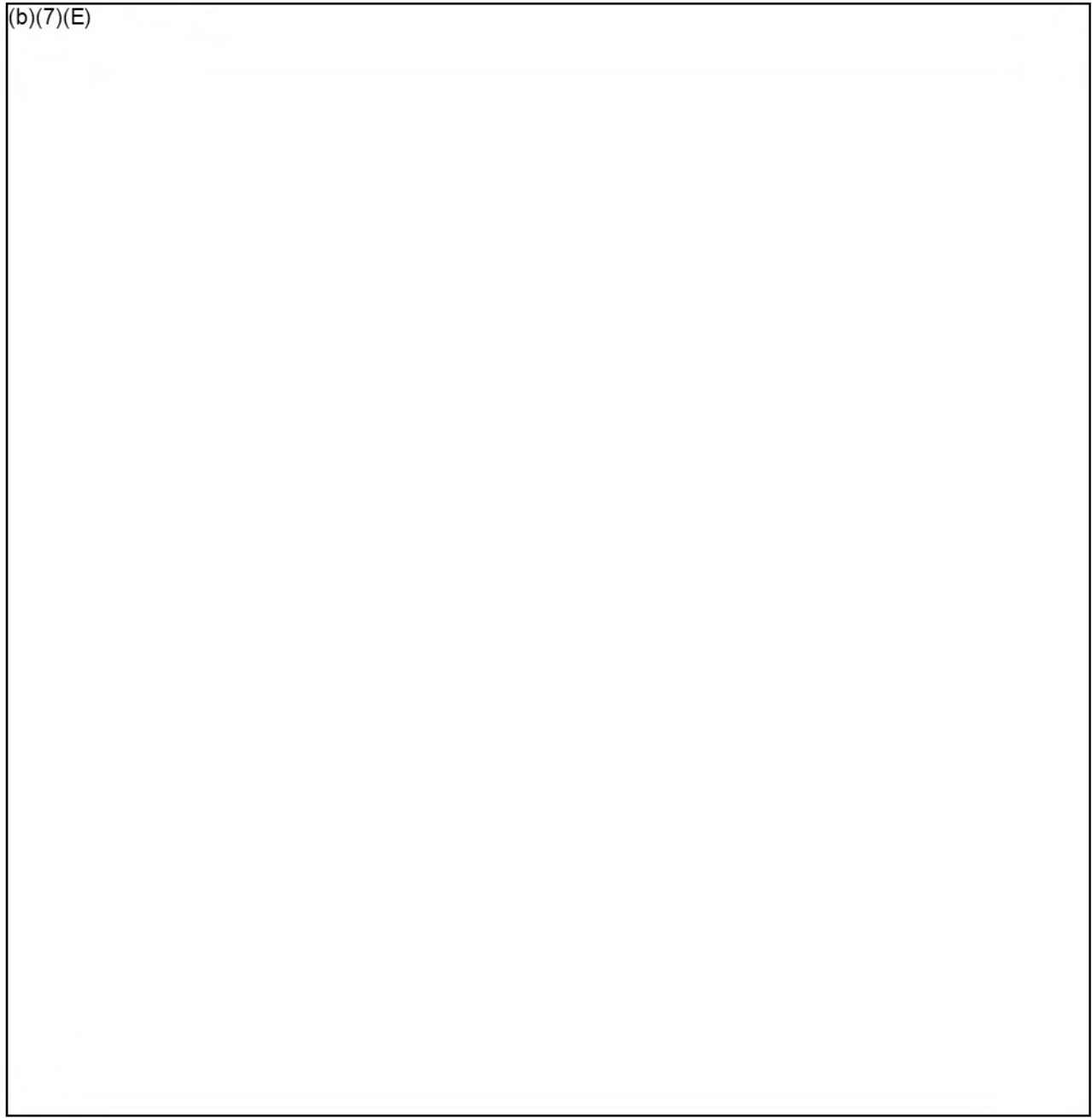
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**Notes:**

(b)(7)(E)



(b)(7)(E)



**Notes:**





- E. EPO #5: Explain the elements of human trafficking crimes; and define the differences between sex trafficking and labor trafficking/forced labor**  
See SDR HS/HT-4 Guidance for the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, March 10, 2010.

The statutes pertaining to human trafficking crimes include:

- **18 U.S.C. § 1583** – Enticement into slavery = defendant *makes another person available to become a slave or subject to involuntary servitude.*
- **18 U.S.C. § 1584** – Sale into involuntary servitude = defendant *makes another a slave or sells another person into involuntary servitude.*
- **18 U.S.C. § 1589** – Forced labor = provides or obtains labor or services of another person by force, threats, etc. or gains financial benefit from doing so.
- **18 U.S.C. § 1581** – Peonage; obstructing enforcement = hold or return a person to peonage.
- **18 U.S.C. § 1203** – Hostage Taking
- **18 U.S.C. § 1590** – Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor = recruit, harbor, transport, provide, or obtain by any means, any person for labor or services violating 18 U.S.C. §§ 1581-1596.
- **18 U.S.C. § 1591** – Sex trafficking of Children or by Force, Fraud, or Coercion = recruit, entice, harbor, transport, provide, obtain, or maintain a person by any means or a minor for commercial sex act or benefit financially from doing so.
- **18 U.S.C. § 1592** – Unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor = destroys, conceals, removes, confiscates, or possesses passport/immigration documents of person while violating 18 U.S.C. §§ 1581-1596.
- **18 U.S.C. § 1593A** – Benefit financially from acts of peonage (1581) or travel document violations (1592).
- **18 U.S.C. § 1594** – Attempt and Conspiracy for committing 18 U.S.C. §§ 1581-1596.

1. Definitions
  - a. **U.S. Constitution** – 13th Amendment: *Neither slavery nor involuntary servitude...shall exist in the U.S.*
  - b. **Slavery** – a person held in servitude as the chattel of another/person who is completely subservient to a dominating influence. A “slave” is a person who is wholly subject to the will of another, one who has no freedom of action and whose services were wholly under control of another, and who is in a state of enforced compulsory service to another.
  - c. **Servitude** – a condition in which one lacks liberty especially to determine one's course of action or way of life
  - d. **Involuntary Servitude** – “involuntary servitude” means action by master causing servant to have, or to believe he has, no way to avoid continued



service or confinement, but not a situation where servant knows he has a choice between continued service and freedom, even if master has led him to believe that choice may entail consequences that are exceedingly bad.

- e. **Peonage** – form of involuntary servitude in which the status or condition of compulsory service is based upon the indebtedness of the peon to the master
  - 1) Involuntary servitude is different from peonage in that peonage requires a debt to be owed from the peon to the master and the peon is working off that debt.
  - 2) Involuntary servitude, on the other hand, is the involuntary service by a person with no debt owed.

Summary		
Slave – owned by and under complete control of another person	Involuntary Servitude – under complete control of another person	Peonage – servitude by one person who owes a debt to another person

**Notes:**

- 2. **18 U.S.C. § 1583** – Enticement into slavery.
  - a. Three ways to commit crime:
    - 1) **Kidnap or carry away** any other person **with the intent that such other person be sold into** involuntary servitude or **held** as a slave
    - 2) **Entices, persuades, or induces** any other person to go on board any vessel or to any other place **with the intent that he or she may be made or held as a slave**, or sent out of the country to be so **made or held or**
    - 3) **Obstructs**, or attempts to obstruct, or in any way interferes with or prevents the **enforcement of this section**.

b. Example: (b)(7)(E)

c. Example: (b)(7)(E)



(b)(7)(E)

- d. Penalties:
  - 1) <20 years and/or fine.
  - 2) Any term of years up to life and/or fine if death results from the violation, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill.

3. **18 U.S.C. § 1584** – Sale into involuntary servitude.

- a. Three ways to commit crime
  - 1) Knowingly and willfully **holds to** involuntary servitude **or**
  - 2) **Sells into** any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held **or**
  - 3) **Obstructs**, attempts to obstruct, or in any way interferes with or prevents the **enforcement of this section**.
- b. A victim having opportunities to escape does not preclude a conviction for holding a person in involuntary servitude, where the victim is placed in such fear of physical harm that he is afraid to leave. **U.S. v. Warren, 772 F.2d 827 C.A. 11 (Fla.) 1985.**

c. Example: (b)(7)(E)

d. Example: Ms. Veerapol, a native of Thailand and the common-law wife of a Thai ambassador, operated a Thai restaurant in Los Angeles. While in Thailand in the summer of 1989, Veerapol approached Nobi Saeieo, a non-English-speaking Thai villager, and offered her transportation to and two years of employment in the United States at a substantially higher wage than Saeieo could earn in Thailand.

Saeieo and two other Thai workers at Veerapol's Los Angeles home and restaurant were required to work long hours performing various chores. Veerapol also used her Thai workers' identities to open bank and credit card accounts, which she then used for her own benefit. She also isolated her workers and maintained control over them through verbal abuse, threats of legal action, physical force, and threat of death.

Veerapol was indicted on charges of harboring aliens, involuntary servitude, and mail fraud. She was convicted and ordered to pay restitution to Saeieo. **U.S. v. Veerapol, 312 F.3d 1128 (9th Cir 2002).**

- e. Penalties:
  - 1) <20 years and/or fine.
  - 2) Any term of years or life imprisonment and/or fine under title 18,



United States Code if death results from the violation, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill.

4. **18 U.S.C. § 1589** – Forced labor.
- a. Two ways to commit crime
- 1) Knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means:
- a) By means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
- b) By means of serious harm or threats of serious harm to that person or another person;
- c) By means of the abuse or threatened abuse of law or legal process; or
- d) By means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.
- OR**
- 2) Benefits financially or by receiving anything of value
- a) From participation in a venture which has engaged in the providing or obtaining of labor or services
- b) By any of the means described above,
- c) Knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means.
- b. Comments: For the purposes of this statute, the term “abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.
- c. The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.
- d. Example: Maria Garcia made arrangements whereby men and boys from Mexico were transported to New York State and housed in isolated, overcrowded and unsanitary conditions and were required to work in the fields of local growers.





- 1) Further, Maria refused to permit these workers to leave their housing units for any reason other than work and failed or refused to pay them their wages. She also threatened them with physical violence and with being caught and deported by the Immigration and Naturalization Service if they attempted to leave. The workers were repeatedly told that they owed large sums of money to her and could not leave without paying off their debts and on occasion, Maria Garcia refused to provide the workers ... with any food. Maria also told the workers that, if they tried to escape, they would be hunted down and returned to her. **U.S. v. Garcia, 2003 WL 22956917 W.D.N.Y. 2003.**

- e. Example: On May 13, 2007 employees of a Long Island donut shop called 911 to request assistance for a seemingly homeless woman. The woman, who was dressed only in pants and a towel, had used hand gestures and halting words to convey to shop employees that she had been struck repeatedly in the face by her "master." With the aid of an interpreter, federal and local authorities learned from the woman that her name was Samirah and she was a native of Indonesia who, since February 5, 2002, had worked as a domestic servant for Varsha Sabhnani, a native of Indonesia, and her husband, Mahender Sabhnani, a native of India, who both became LPR's and then American citizens.

Samirah explained that the Sabhnanis sent \$100 a month to her daughter in Indonesia. She also stated she was forced into servitude and that she experienced routine physical abuse at the hands of Varsha Sabhnani and with the knowledge of Mahender Sabhnani. Samirah advised the officers that another Indonesian woman named was also working at the house under similar forced conditions.

In the course of a joint investigation HSI agents executed search warrants at the Sabhnanis' home, where they found a second Indonesian woman hiding in a small closet, and seized various items that appeared to corroborate Samirah's account of physical abuse. The Sabhnanis admitted knowing that the two Indonesian women entered as B-2 visitors, overstayed, and were illegally present in the United States. The Sabhnanis were arrested and convicted of two counts of forced labor. **U.S. v. Sabhnani, 599 F.3d 215 (2d Cir 2010).**

- f. Penalties:
  - 1) <20 years and/or fine.
  - 2) Any term of years or life imprisonment and/or fine under title 18, United States Code if death results from the violation, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill.



5. **18 U.S.C. § 1581** – Peonage; obstructing enforcement.

a. Two ways to commit crime

- 1) Holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage **or**
- 2) obstructs or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section.

b. It is sufficient to constitute peonage that a person is held against his/her will and made to work to pay a debt; the amount of which and the means of coercion is immaterial.

c. Example: (b)(7)(E)

(b)(7)(E)

d. Penalties:

- 1) <20 years and/or fine.
- 2) Any term of years or life imprisonment and/or fine under title 18, United States Code if death results from the violation, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill.

**Notes:**

6. **18 U.S.C. § 1203** – Hostage Taking.

a. Elements

- 1) Whether inside or outside the United States,
- 2) Seizes or detains and threatens to kill, to injure, or to continue to detain another person
- 3) In order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained or
- 4) Attempts or conspires to do so.



- b. It is not an offense under this section if the conduct required for the offense occurred outside the United States unless:
  - 1) The offender or the person seized or detained is a national of the United States;
  - 2) The offender is found in the United States; or
  - 3) The governmental organization sought to be compelled is the Government of the United States.
  
- c. Comments: It is not an offense under this section if the prohibited conduct occurred in the United States, each alleged offender and each person seized or detained are nationals of the U.S., and each alleged offender is found in the U.S., unless the government organization sought to be compelled is the United States.

- d. Penalties:
  - 1) Any term of years or life imprisonment
  - 2) Death or life imprisonment if death of any person results.

- e. Example: In the weeks leading up to the day of the actual kidnapping, Felix Corporán-Cuevas and Félix Beras planned, prepared for, and agreed to effect the kidnapping of Carlos de la Rosa Berbera and hold him for ransom. On April 18, 1996, in the District of Puerto Rico, Felix Corporan-Cuevas's co-conspirator Félix Beras and an unidentified individual abducted thirteen-year old Carlos de la Rosa Berbera who was traveling in a car with his grandmother, Carmen Villar-Cordero. At gun-point, the two kidnapers ordered Mrs. Villar-Cordero out of the car and drove off with her grandson. Two hours later, Mrs. Villar-Cordero received a ransom call, ordering that she produce the child's parents or money in exchange for her grandson's freedom. By then, it appeared that, in addition to Félix Beras, defendant Corporán and two other men were holding young Carlos. The FBI succeeded in rescuing the child four days later in Rio Piedras. Both Corporán and Beras were on the scene and were arrested. Corporán freely admitted that he was a national of the Dominican Republic. **U.S. v. Corporan-Cuevas, 244 F.3d 199 C.A.1 (Puerto Rico) 2001.**

**Notes:**



- 7. **18 U.S.C. § 1590** – Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor.
  - a. Two ways to commit crime
    - 1) Recruit, harbor, transport, provide, or obtain by any means, any person for labor or services in violation of 18 U.S.C. §§ 1581-1596
    - or**
    - 2) Obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section.

b. Example: (b)(7)(E)

(b)(7)(E)

c. Example: (b)(7)(E)

(b)(7)(E)

d. Penalties:

- 1) <20 years and/or fine.
- 2) Any term of years or life imprisonment and/or fine under title 18, United States Code if death results from the violation, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill.

8. **18 U.S.C. § 1593A** – Benefiting financially from peonage, slavery, and trafficking in persons.

- a. Elements
  - 1) Benefits, financially or by receiving anything of value,
  - 2) From participation in a venture which has engaged in any act in violation of:
    - a) 1581(a) – Holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage
    - b) 1592 – Unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor
    - c) 1595(a) – Civil remedy



- 3) Knowing or in reckless disregard of the fact that the venture has engaged in such violation

b. Example: (b)(7)(E)  
(b)(7)(E)

9. **18 U.S.C. § 1591** – Sex trafficking of Children or by Force, Fraud, or Coercion.

a. Four ways to commit crime

- 1) Recruit, entice, harbor, transport, provide, obtain, or maintain a person by any means
  - a) Knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion, or any combination of such means will be used to cause
  - b) The person to engage in a commercial sex act **or**
- 2) Benefit, financially or by receiving anything of value, from participation in a venture which has engaged in recruitment, enticement, harboring, transporting, providing, obtaining, or maintaining a person by any means
  - a) Knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion, or any combination of such means will be used to cause
  - b) The person to engage in a commercial sex act **or**
- 3) That the person has not attained the age of 18 years and will be caused to engage in a commercial sex act **or**
- 4) Obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section.

**Note:** Must be in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States.

b. The statutory language found in 18 U.S.C. § 1591 (c) [effective only for prosecution of crimes committed on/after December 23, 2008], states that in a prosecution under 18 U.S.C. § 1591 (a)(1) where a defendant had a reasonable opportunity to observe the person recruited, enticed, harbored, transported, provided, obtained, or maintained, the government



need not prove that the defendant actually knew the person had not attained the age of 18 years. So for crimes committed on December 23, 2008 or later, the law imposes strict liability with regards to a criminal defendant's awareness of the victim's age, thus relieving the government's usual burden to prove knowledge or reckless disregard of the victim's underage status under 18 U.S.C. § 1591 (a)(1). A good example of this strict liability in action is found at *United States v. Robinson*, 702 F.3d 22 (2nd Cir. 2012).

c. Important statutory terms:

- 1) The term *abuse or threatened abuse of law or legal process* means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.
- 2) The term *coercion* means (a) threats of serious harm to or physical restraint against any person; (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (c) the abuse or threatened abuse of law or the legal process.
- 3) The term *commercial sex act* means any sex act, on account of which anything of value is given to or received by any person.
- 4) The term *serious harm* means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.
- 5) The term "venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

d. Example: In January 2005, 18 year old high school student Kelsey Kirschman began dating 26 year old Jerome E. Todd. In May 2006, Todd suggested they get a place together, and told Kirschman they could get rich together if she worked as a prostitute. She agreed, and he ran advertisements of her, offering "full service" for \$200, in addition to directing her to walk the track, which was an area frequented by prostitutes and potential customers. Todd forced Kirschman to give him all her money, and Todd maintained his rules psychologically by emotionally and physically abusing her.

Between 2006 and 2007, Todd added three more women to his "stable." The court concluded that Todd knew he would follow the same pattern with Whitney T. and then with Whitney E. and Jemelle L. Jerome Todd



knew that he would use coercion to cause his sex workers to make money for him. **U.S. v. Todd, 627 F.3d 329 (9th Cir 2010).**

- e. Penalties:
- 1) 15 years minimum imprisonment or for life and a fine under title 18, United States Code if the offense was effected by means of force, threats of force, fraud, or coercion [as defined in the statute] or by any combination of such means.
  - 2) 15 years minimum imprisonment or for life and a fine under title 18, United States Code, if the victim recruited, enticed, harbored, transported, provided, or obtained had not attained the age of 14 at the time of such offense,
  - 3) 10 years minimum imprisonment or for life and a fine under title 18, United States Code if the offense was not effected by means of force, threats of force, fraud, or coercion [as defined in the statute] or by any combination of such means, and the person recruited, enticed, harbored, transported, provided, or obtained had attained the age of 14 years but had not attained the age of 18 at the time of such offense,
  - 4) <20 years and/or fine under title 18, United States Code for whoever obstructs, attempts to obstruct, or in any way interferes with enforcement of this section.

10. **18 U.S.C. § 1592** – Unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor.

a. Three ways to commit crime:

1) Destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document of another person in the course of a violation of section:

- a) 1581 – peonage
- b) 1583 – enticement into slavery
- c) 1584 – sale into involuntary servitude
- d) 1589 – forced labor
- e) 1590 – trafficking with respect to peonage, slavery, involuntary servitude, or forced labor
- f) 1591 – sex trafficking
- g) 1594(a) – attempt to do any of the above

with intent to violate section 1581, 1583, 1584, 1589, 1590, 1591;

**OR**

2) To prevent or restrict or to attempt to prevent or restrict, without lawful authority, the person's liberty to move or travel, in order to maintain the labor or services of that person, when the person is



or has been a victim of a severe form of trafficking in persons as defined in section 103 of the Trafficking Victims Protection Act of 2000 (1591 – sex trafficking) [22 U.S.C. § 7102 and 18 U.S.C. § 1591(e)]

OR

3) Obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section.

b. Comment: Section a. above, does not apply to the conduct of a person who is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000 [22 U.S.C. § 7102] if that conduct is caused by or incident to, that trafficking.

c. Penalty: <5 years and/or fine.

d. Example: (b)(7)(E)

(b)(7)(E)

**Notes:**

11. **18 U.S.C. § 1594** – General provisions [Attempt and Conspiracy]

- a. 18 U.S.C. § 1594(a) – Whoever **attempts** to violate section 1581, 1583, 1584, 1589, 1590, 1591 of Title 18 U.S. Code shall be punishable in the same manner as a completed violation of such section.
- b. 18 U.S.C. § 1594(b) – Whoever **conspires** with another to violate section 1581, 1583, 1589, 1590, or 1592 of Title 18 U.S. Code shall be punishable in the same manner as a completed violation of such section.
- c. 18 U.S.C. § 1594(c) – Whoever **conspires** with another to violate section 1591 shall be fined under title 18, United States Code, imprisoned for any term of years or for life, or both.
- d. Example: Frank and Joe conspired to commit a violation of 18 U.S.C. § 1589 (forced labor). They will be sentenced for the forced labor and the conspiracy to commit forced labor per 18 U.S.C. § 1594(b), which will carry an additional penalty equal to the forced labor violation.





- e. Penalties:
- 1) Same as underlying offense for an attempt to commit a violation of 1581, 1583, 1584, 1589, 1590, or 1512.
  - 2) Same as underlying offense for any conspiracy to commit a violation of 1581, 1583, 1589, 1590, or 1592.
  - 3) For conspiracy to violate 1591, fined under title 18, United States Code, imprisoned for any term of years or for life, or both.
  - 4) Forfeiture of any property used in the commission of the offense or derived from proceeds from the commission of the offense.

**Demonstration/Example:**

(b)(7)(E)



(b)(7)(E)

**F. EPO #6: Define human trafficking and identify indicators to establish violations of human trafficking statutes.**

1. Definition of human trafficking:
  - a. The recruitment, harboring, transportation, provision, or obtaining of a person (regardless of citizenship or immigration status), by means of threat or use of force, fraud, or coercion, subjecting victims to involuntary servitude, peonage, debt bondage, or slavery for the purpose of sexual exploitation or forced labor.
  - b. The statutes governing this offense are contained within 18 USC §§ 1581-1594 and the associated Mann Act statutes of 18 USC §§ 2421-2424, and Title 8 USC §1328, Importation and Harboring of Aliens for Immoral Purposes.
  - c. Trafficking Victims Protection Act of 2000 (TVPA) – Public Law 106-386
    - 1) Enacted in October 2000.
    - 2) Prior to that, no comprehensive federal law existed to protect victims of trafficking or to prosecute their traffickers.



- 3) Human trafficking is increasingly committed by organized, sophisticated criminal groups, and is the fastest growing source of profits for organized criminal enterprises worldwide.
  - 4) Profits from trafficking industry contribute to the expansion of organized crime in the U.S. and worldwide.
  - 5) TVPA goals:
    - a) Combat and prevent human trafficking overseas
    - b) Protect victims and help them rebuild their lives in the U.S. with federal and state support
    - c) Prosecute traffickers of persons under stiff federal penalties
- d. Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA)
- 1) In 2003, the Bush Administration authorized more than \$200 million to combat human trafficking through (TVPRA)
  - 2) Renews U.S. government's commitment to identify and assist victims exploited through labor and sex trafficking in the U.S.
  - 3) Provides resources and initiatives to assist the 18,000-20,000 victims of human trafficking who are trafficked into the U.S. every year.
    - a) Augments the legal tools that can be used against traffickers by empowering victims to bring federal civil suits against traffickers for actual and punitive damages, and by including sex trafficking and forced labor as offenses under the Racketeering Influenced and Corrupt Organization statute.
  - 4) Also encourages the nation's 21,000 state and local law enforcement agencies to participate in detection and investigation of human trafficking cases.
  - 5) U.S. Department of Health and Human Services has a significant role in implementing the law's victim-centered, compassionate approach to finding and aiding the victims of this modern-day slave trade.
- e. Trafficking Victims Protection Reauthorization Act of 2013



(TVPRA)

- 1) In addition to 2003, the Act has been reauthorized in 2005, 2008, 2011, and 2013.
- 2) TVPRA 2013 provides for the following:
  - a) In general, 18 USC Chapter 77, Peonage, Slavery, and Trafficking in Persons, is amended by adding at the end § 1597 – Unlawful Conduct with Respect to Immigration Documents.
    - "(a) Destruction, concealment, removal, confiscation, or possession of immigration documents – It shall be unlawful for any person to knowingly destroy, or, for a period of more than 48 hours, conceal, remove, confiscate, or possess, an actual or purported passport, other immigration, or personal identification document of another individual –
      - (1) In the course of a violation of section 1351 of this title or section 274 of the Immigration and Nationality Act (8 U.S.C. 1324);
      - (2) With intent to violate section 1351 of this title or section 274 of the Immigration and Nationality Act (8 U.S.C. 1324); or
      - (3) In order to, without lawful authority, maintain, prevent, or restrict the labor of services of the individual.
    - (b) Penalty – Whoever violates subsection (a) shall be fined under this title, imprisoned for not more than 1 year, or both.
    - (c) Obstruction – Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties described in subsection (b)."



2. Investigatory leads may come from:

(b)(7)(E)

**Notes:**

3. Indicators of human trafficking

(b)(7)(E)



(b)(7)(E)

4. Elements that constitute a trafficking victim
  - a. Must contain an element of force, fraud, or coercion (actual, perceived or implied), unless under 18 years of age and involved in commercial sex acts.
  - b. Forced labor and/or exploitation; requires an element of Force, Fraud or Coercion regardless of the age of the victim.
  - c. Persons trafficked are victims
  - d. Enslaved, subjected to limited movement or isolation, or had documents confiscated.
  - e. Need not involve the actual movement of the victim.
  - f. No requirement to cross an international border.
  - g. The person need not be actively involved in forced labor or commercial sexual services. Can be identified as a victim based upon historical circumstances, provided HSI agents make substantial corroboration of the facts.
  
5. Sex Trafficking vs. Labor Trafficking and Forced Labor
  - a. In Sex Trafficking, the overt act itself (commercial sex, sexual servitude) is most often a violation of law in its own right, and is always illegal with respect to minors.
  - b. In Labor Trafficking and Forced Labor, the overt acts are usually some type of legitimate business (services, agriculture or domestic work) being



utilized to employ slave labor. The fact that minors can be legally employed in a number of these areas makes discovering and investigating these cases much more complex.

**Notes:**

**G. EPO #7: Identify common methods of operation utilized by human trafficking organizations.**

1. Trafficking organization structure
  - a. **Recruiter** – Uses multi-media advertisements, personal contact networks, or family sales to obtain victims in source countries.
  - b. **Arranger/Coordinator** – Facilitates acquisition of travel documents, either fraudulent or legitimate, and arranges transport to the U.S.
  - c. **Receiving Co-conspirator** – Receives victims upon arrival in the U.S. and arranges temporary staging locations and retrieves travel documents, reveals debt bondage, and distributes or resells victims to business owners/managers.
  - d. **Transporter** – Transport victims from harboring location to job site, or between different job sites, or on out-calls for escort services and out-call prostitution (house calls). Can operate locally or across state lines.
  - e. **Harboring/security** – Maintains victims at harboring site or job site, prevents escape and freedom of movement, and may double as transporter.
  - f. **Business owner/manager** – May employ victims in prostitution, agricultural, garment, or other industries, or be involved in domestic servitude for themselves or others.
    - 1) Business owner may be independent of the traffickers operation and thus be unaware of the victim's true situation (unwitting participant).
  - g. All these roles may be held by more than one person, and one person may play multiple roles at one or varying times in the human trafficking organization.



**Notes:**

**H. EPO #8: Identify investigative approaches and actions to investigate cases of human trafficking.**

1. Trafficking victim identification and assessment

(b)(7)(E)

2. Investigative approach

(b)(7)(E)





(b)(7)(E)

**Notes:**

4. Considerations in dealing with trafficking victims

(b)(7)(E)



(b)(7)(E)

**Notes:**

5. Considerations for handling trafficking victims encountered as a result of enforcement actions.

(b)(7)(E)



(b)(7)(E)

b. Considerations during enforcement actions

(b)(7)(E)

c. Considerations following enforcement actions

(b)(7)(E)



**Notes:**

**I. EPO #9: Identify various programs within HSI designated to provide assistance to identified victims of human trafficking.**

1. Smuggled aliens and victims of trafficking
  - a. Smuggled aliens
    - 1) Critical to investigation as material witnesses – a need to tell the story
    - 2) May be detained temporarily, or granted parole status and released into U.S. pending the outcome of the investigation and prosecution
    - 3) Once their cooperation is completed, most subjects are placed in removal proceedings.
  - b. Victims of trafficking
    - 1) Consistent with HSI's victim-centered approach, subject is first and foremost a victim who must be protected, and may also be a witness
    - 2) Foreign nationals are eligible for Continued Presence (CP) in U.S., as well as the ability to apply for T or U visa.
    - 3) Both foreign and domestic victims of trafficking are eligible to receive protections and benefits under U.S. law.
2. Authorities requiring victims' rights and services:
  - a. Victims' Rights and Restitution Act (VRRRA), 42 USC § 10607 (2006)
    - 1) Includes mandatory services
  - b. Crime Victims' Rights Act (CVRA), 18 USC § 3771 (2006 & Supp. III 2009)
    - 1) Includes court-enforceable rights
  - c. Additional rights and requirements exist in other statutes and rules of criminal procedure.



3. Victim definition, per HSI Directive 1007.1, HSI Victim Assistance Program, August 25, 2011, includes:
  - a. A person directly or proximately harmed as a result of the commission of a federal offense; may be located outside the US.
  - b. A person culpable for or accused of the crime being investigated or prosecuted shall not be considered a victim for purposes of rights and services.
  - c. A person who may be culpable for violations or crimes other than the crime being investigated or prosecuted may be considered a victim under this directive; for example:
    - 1) Victims of involuntary servitude or trafficking may be considered victims for purposes of prosecution of those crimes, despite any legal culpability they may have for ancillary immigration or prostitution offenses.
    - 2) Criminal suspects who are subjected to excessive force by law enforcement officers.
    - 3) Inmates who are victims of crime during their incarceration may be considered victims.
  - d. Witness – a person who has information, knowledge, or evidence concerning a crime and provides information to an LEA.
    - 1) A victim of a crime may become a witness and a witness who is threatened may become a victim.
    - 2) This Directive does not cover confidential informants or undocumented sources of information.
4. Special victim populations – federal statutory provisions for services for victims of:
  - a. Domestic violence, stalking, or sexual assault
  - b. Child abuse
    - 1) Mandatory reporting of any suspected child abuse or exploitation under state and federal law – responsibility of individual SAs, with sanctions for failing to report.
  - c. Identity theft
  - d. Human trafficking

**Notes:**



5. Procedures when identifying victims:

- a. Identify cases with identified crime victims in (b)(7)(E)
- b. (b)(7)(E)

6. Services and rights of victims:

- a. At the earliest opportunity after detection of a crime responsible official shall provide identified victims with information about services available to them.
- b. Services include:
  - 1) Referral to place to receive emergency medical or social services
  - 2) Availability of restitution or other relief victim may be entitled to
  - 3) Public and private programs for counseling, treatment, other support
  - 4) Reasonable protection – not a service per se but a required consideration
- c. Services for victims of domestic violence, stalking or sexual assault
  - 1) Immigrant victims of domestic violence should be informed that they may petition for immigration protections and relief and assistance available under federally-funded programs
  - 2) Victims can have investigating agency pay for forensic sexual assault exam (with no requirement to cooperate with LEA)
- d. Services for victims of child abuse
  - 1) Requires forensic interview by HSI Forensic Interview Specialist
    - a) Fact-finding investigative interview that assists in determining whether or not a crime has been committed using non-leading, developmentally appropriate, and victim-sensitive approach
  - 2) Age-appropriate support services to victims and referrals for community-based services to parents and guardians as indicated.
  - 3) Privacy protection for child victims and witnesses
    - a) Child's name or other identifying information (other than initials or an alias) should not be reflected in court documents or other public records unless otherwise required by law.



- e. Services for victims of human trafficking
  - 1) Foreign national victims of severe form of trafficking, as identified by federal LEA, are eligible for certain benefits and services such as employment authorization and parole without regard to their immigration status.
  - 2) May be eligible for public benefits
  - 3) Shall not be detained in facilities inappropriate to their status as crime victims

**Notes:**

- 7. The HSI SAC Victim Assistance Specialist (VAS) or Victim Assistance Coordinator (VAC) should be the primary point of contact for case agents to coordinate victim services as needed.
  - a. During investigation the investigating agency is responsible for referring victim to services
  - b. Once an investigation has transferred to the prosecutorial entity or charges are filed, responsible officials from the prosecutorial entity are responsible for ensuring referrals for services are made.
- 8. Case agent's focus in all human trafficking cases must be on victim and victim's safety.
  - a. Investigation is secondary to recovery and well-being of victim.
  - b. When necessary, coordinate with VAS or VAC for forensic interview of victim.
  - c. Ensure coordination by VAS or VAC with local NGOs and victim service providers.

**Notes:**



9. Process victims for Continued Presence (CP) – temporary immigration designation for victims of human trafficking – Renewable and Revocable.  
**(HSI Directive 10075.2 dated 10/06/2016- Continued Presence)**
  - a. Provided statutorily under Trafficking Victims Protection Act
    - 1) LEO makes initial determination if individual is victim of a severe form of human trafficking:
      - a) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, **or**
      - b) If person is under 18 and induced to perform a commercial sex act  
**or**
      - c) Recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery
    - 2) Determination is made as early and as expeditiously as possible, in accordance with HSI's Victim-centered approach.
  - b. Federal LEOs are authorized to submit CP applications
    - 1) Should be submitted as soon as victim identified
    - 2) Coordinate with SAC Victim Assistance Specialist
    - 3) Approved by HSI Law Enforcement Parole Branch
  - c. CP granted initially for up to two years, with extensions of up to two years.
  - d. Victim's cooperation with LEA not required for eligibility but other assistance may be available to cooperating witnesses
    - 1) Benefits may include housing, educational assistance, food stamps
    - 2) Award of benefits to minor victims does not require cooperation with LEA to receive benefits
  - e. Employment authorization document (EAD), which can be used as identity document, issued to alien with CP
    - 1) Alien without legal status/lawful entry also issued I-94.
10. Victims of human trafficking may apply for T visa
  - a. Available to victims and qualifying family members  
Capped at 5,000 available annually





- 1) Permits visa-holder to remain in U.S. for up to four years and can lead to adjustment of status to LPR.
  - 2) Coordinated by Victim Assistance Specialist
  - 3) Certification of application (Form I-914, Supplement B) by LEA is primary evidence that applicant is victim of severe form of trafficking and has complied with reasonable request for assistance in investigation or prosecution.
11. U visa available to victims of certain serious crimes and qualifying family members  
Capped at 10,000 available annually
- a. Specified crimes include rape, domestic violence, extortion, witness tampering, and conspiracy or solicitation to commit such crimes (see Form I-918)
  - b. Victim must have suffered substantial physical or mental abuse as result of qualifying crime
  - c. Crime occurred in U.S.
  - d. Victim possesses information concerning the crime
  - e. LEA certifies that victim has been or is likely to be helpful in investigation or prosecution of the crime utilizing Form I-918, supplement B
12. Segregation of detained aliens
- a. During all transport, interviews and processing, alien suspects must be separated from witnesses and victims
    - 1) Coordinate with HSI field office and/or LEA to ensure facilities will be available that will allow separation
  - b. Transport suspects and witnesses in accordance with HSI policy

(b)(7)(E)



(b)(7)(E)

- J. EPO #10: Handle an alien smuggling load from initial encounter to writing the criminal complaint.**

(b)(7)(E)



(b)(7)(E)



(b)(7)(E)

**DEMONSTRATION**

(b)(7)(E)



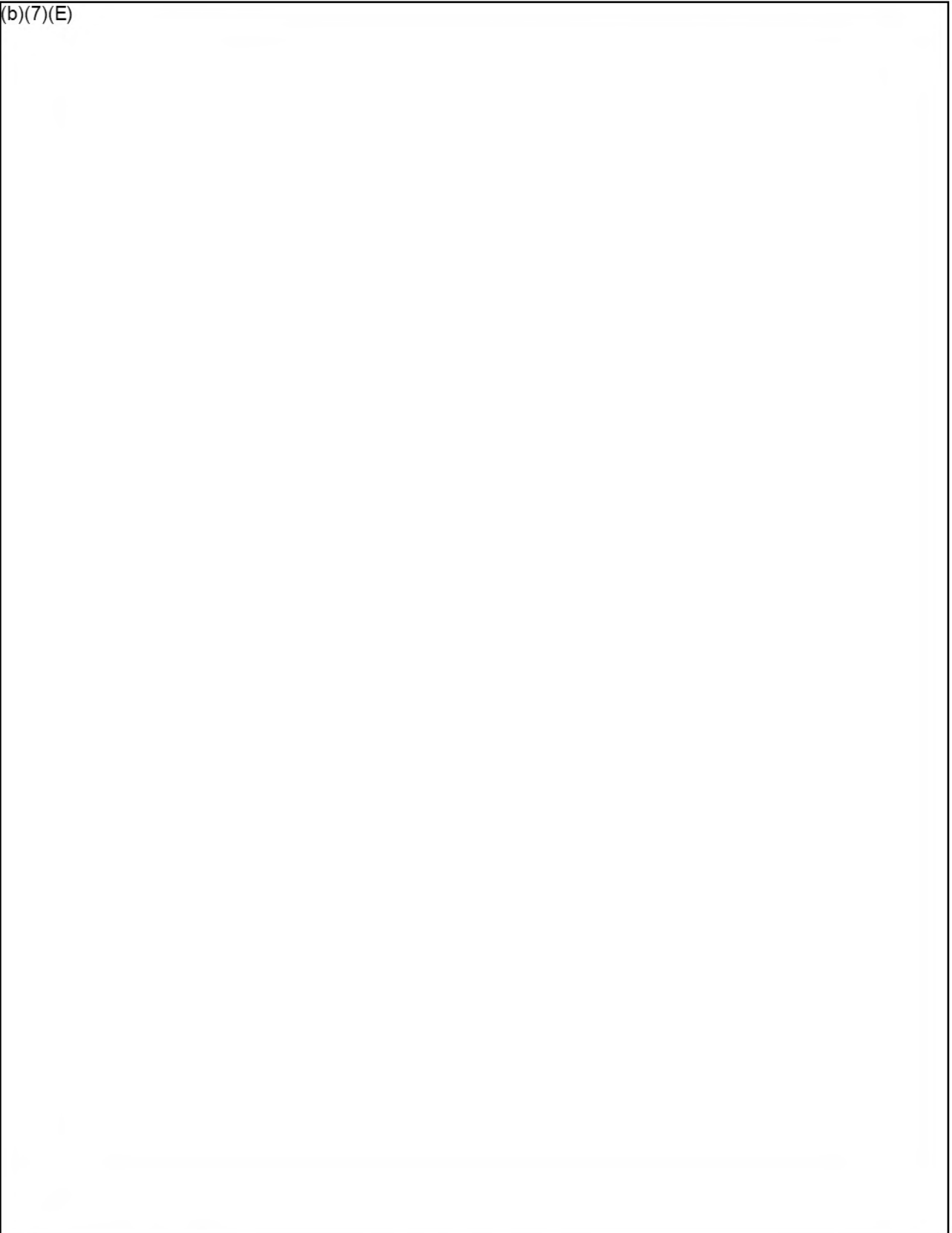
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### Student Practice

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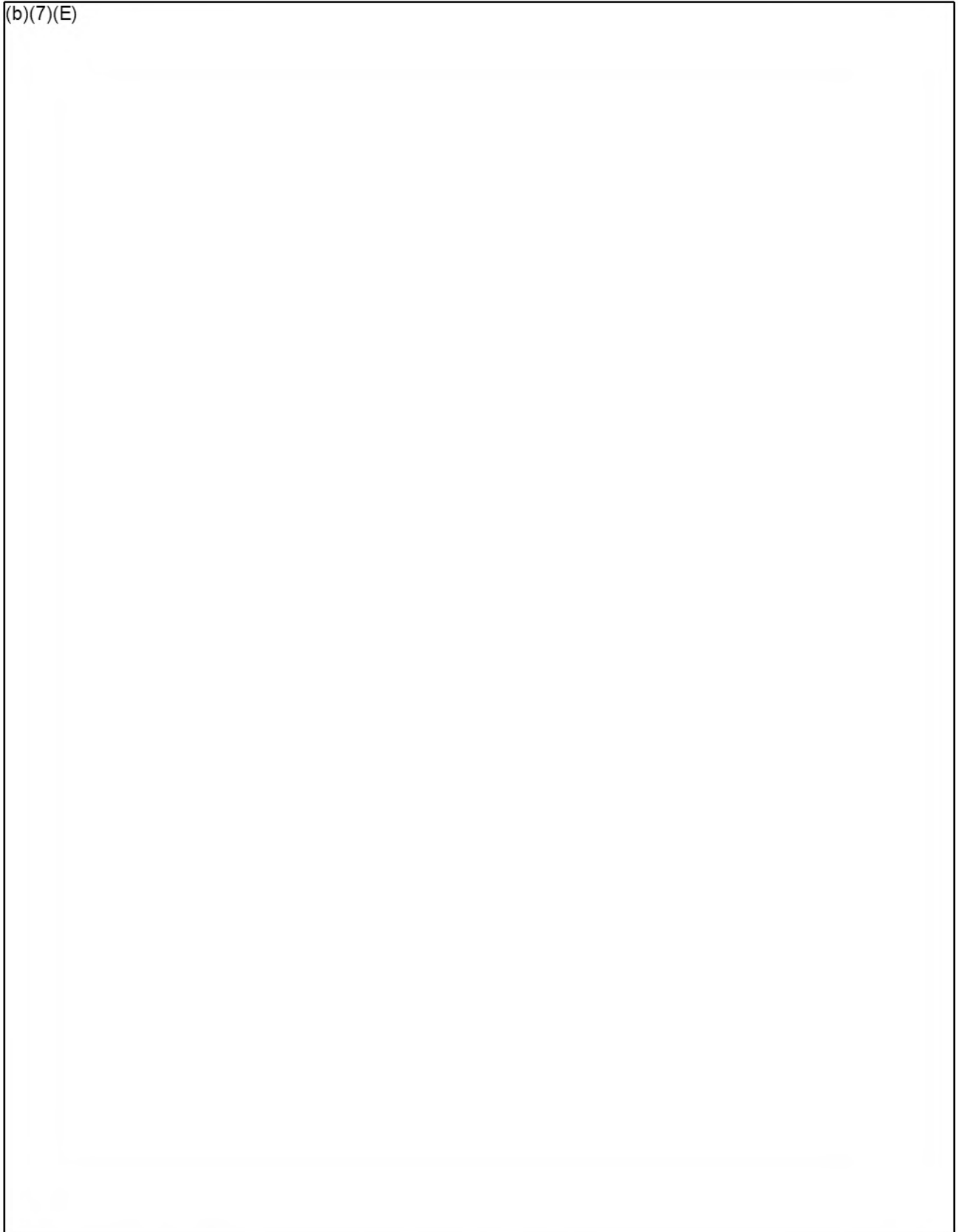


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## CONCLUSION

### Summary of Main Ideas

There are important distinctions in the definitions of human smuggling and human trafficking investigations.

ASOs employ a variety of smuggling methods and their organization and operation differs between the southern and northern U.S. borders.

HSI has various tools and investigative methods to pursue these cases, including (b)(7)(E)

(b)(7)(E)

(b)(7)(E)

The victims of human trafficking are a top priority, and their rescue and support after the fact are not only HSI policy but can also aid in prosecutorial efforts.

As a Special Agent, not only do you help secure the country, but you also assist those who are victims of crimes, both citizens and aliens. Enforcing violations of human smuggling and trafficking not only reduces the amount of illegal aliens in our country, but also helps innocent victims return to their home countries.

### Integration

The investigation of human trafficking and human smuggling cases draws on the various techniques and procedures used in other types of investigations.

### Objectives

This lesson concentrated on human smuggling and human trafficking. You should now be able to:

- Explain the elements of human smuggling crimes.
- Define human smuggling and related terms and identify indicators to establish violations of human smuggling statutes.
- Identify the different methods used by Alien Smuggling Organizations (ASOs) to bring aliens into the U.S., including by land, sea and air, both through the Ports of Entry (POEs) and by crossing the borders at other than POEs.
- Determine investigative approaches and actions to investigate human smuggling cases.
- Explain the elements of human trafficking crimes; and define the differences between sex trafficking and labor trafficking/forced labor.
- Define human trafficking and identify indicators to establish violations of human trafficking statutes.
- Identify common methods of operation utilized by human trafficking organizations.
- Identify investigative approaches and actions to investigate each type of human trafficking case.



- Identify various programs within HSI designated to provide assistance to identified victims of human trafficking.
- Handle an alien smuggling load from initial encounter to writing the criminal complaint.

## Motivation

Human trafficking is a form of modern day slavery. HSI places a priority on human trafficking investigations and recognizes victims of human trafficking as crime victims.

In human smuggling cases individuals participate voluntarily by entering into a contract with alien smuggling organizations in attempting to enter the U.S. illegally.

But often there are areas where these two distinctly different crimes overlap, as when a smuggler uses force or coercion to collect smuggling fees or when promised employment turns into forced labor or commercial sex.

HSI agents conduct criminal investigations into each type of offense, and understanding the differences, and similarities, is essential.

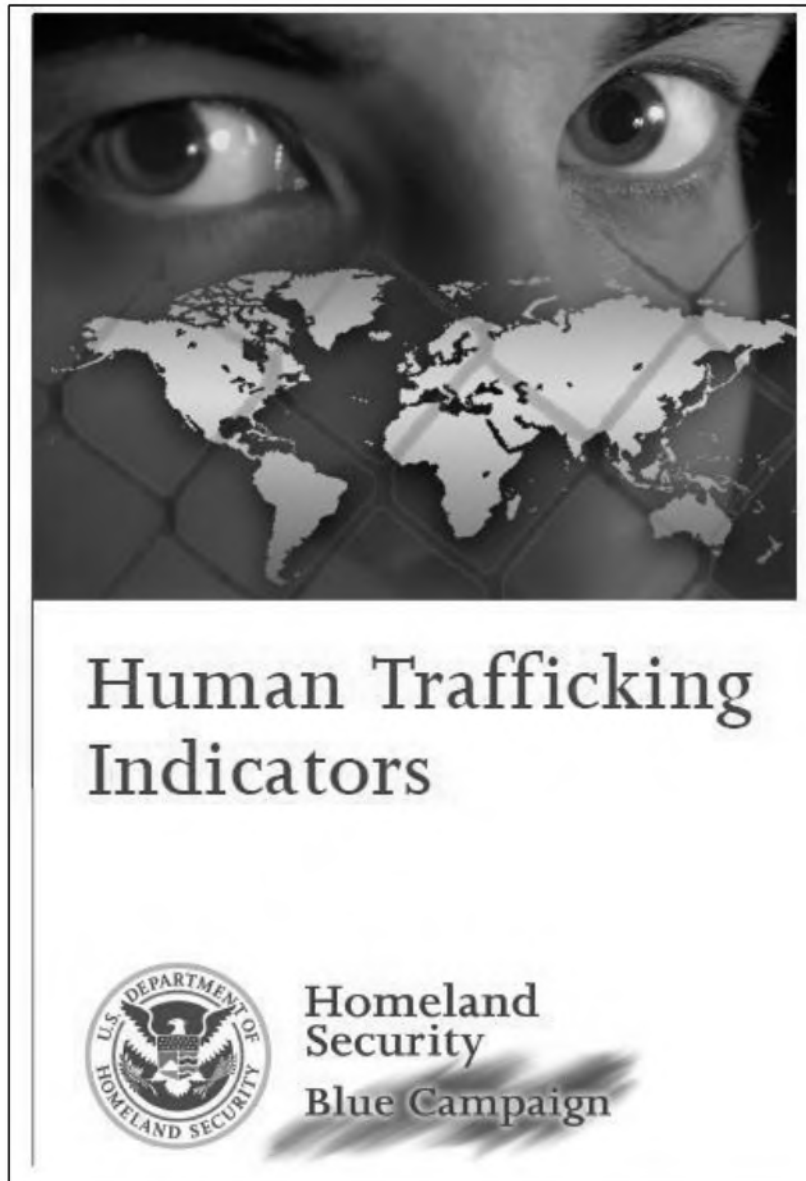
## Test or Final Activity

This knowledge will be tested in practical exercise #3 (b)(7)(E) In the scenario, students will be asked to:

- Determine if a human smuggling or human trafficking situation exists.
- Determine who in the vehicle may be a principal in the operation.
- Plan and take investigative steps to develop information required for an affidavit.
- Prepare information for presentation to the AUSA.



## Attachments





## Global Impact

Men, women and children are trafficked across international borders each year. Victims are trafficked into the international sex trade and into forced labor situations throughout the world. Many of these victims are lured from their homes with false promises of well-paying jobs; instead, they are forced or coerced into prostitution, domestic servitude, farm or factory labor or other types of forced labor.

## Understanding Means of Coercion

Victims often find themselves in a foreign country and cannot speak the language. Traffickers often take away the victims' travel and identity documents and tell victims that if they attempt to escape, the victims or their families back home will be harmed or that the victims' families will assume the debt. We recognize that men, women and children that are encountered in brothels, sweat shops, massage parlors, agricultural fields and other labor markets may be forced or coerced into those situations and potentially are trafficking victims.

### Trafficking Indicators

- Is the victim in possession of identification and travel documents; if not, who has control of the documents?
- Was the victim coached on what to say to law enforcement and immigration officials?
- Was the victim recruited for one purpose and forced to engage in some other job?
- Is the victim's salary being garnished to pay off a smuggling fee? (Paying off a smuggling fee alone is not considered trafficking.)
- Was the victim forced to perform sexual acts?
- Does the victim have freedom of movement?
- Has the victim or family been threatened with harm if the victim attempts to escape?
- Has the victim been threatened with deportation or law enforcement action?
- Has the victim been harmed or deprived of food, water, sleep, medical care or other life necessities?
- Can the victim freely contact friends or family?
- Is the victim a juvenile engaged in commercial sex?
- Is the victim allowed to socialize or attend religious services?



### Trafficking vs. Smuggling

Human Trafficking is defined as:

- sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.

Human Smuggling is defined as:

- the importation of people into the U.S. involving deliberate evasion of immigration laws. This offense includes bringing illegal aliens into the U.S., as well as the unlawful transportation and harboring of aliens already in the United States.

**These are not interchangeable terms**

- Smuggling is transportation-based
- Trafficking is exploitation-based

## Role of ICE

U.S. Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security, works with its law enforcement partners to dismantle the global criminal infrastructure engaged in human trafficking. ICE accomplishes this mission by making full use of authorities and expertise, stripping away assets and profit incentive, collaborating with U.S. and foreign partners to attack networks worldwide and working in partnership with nongovernmental organizations (NGOs) to identify, rescue and provide assistance to trafficking victims.

## Victim-Centered Approach

ICE recognizes that in order to successfully investigate and prosecute traffickers, victims must be stable and free from fear and intimidation to be effective witnesses. Equal value is placed on the identification and rescue of victims and the prosecution of traffickers. ICE has more than 300 collateral duty victim/witness coordinators who work with NGOs to assist in the provision of victim services. Short-term immigration relief is provided to certified victims of trafficking in the form of Continued Presence (CP).



### Anti-Trafficking Successes

#### NGO Tip Leads to Rescue of 85 Trafficking Victims

In New York, Peruvian migrants were subjected to forced labor and debt bondage. A husband and wife were sentenced to 11 and 15 years, respectively, for Conspiracy to Commit Forced Labor and Document Servitude, Conspiracy to Bring In and Harbor Aliens and Engaging in Extortionate Credit Transactions.

#### Trafficker Arrested in Cameroon

In Baltimore, a 10-year-old girl from Cameroon was brought to the U.S. for the purpose of domestic servitude and subjected to physical abuse and isolation. The trafficker fled the U.S. and was later arrested in Cameroon. The trafficker was brought back to the U.S. to serve a 17-year sentence for Involuntary Servitude and Harboring for Financial Gain. The trafficker was ordered to pay \$100,000 restitution to the victim.

#### Trafficker Sentenced to 23 Years

In Texas, four Mexican women were rescued from traffickers who raped them and forced the victims to cook and clean for them. Eight defendants were convicted of human smuggling/trafficking violations. The lead defendant was sentenced to 23 years for Involuntary Servitude.

#### Six Traffickers Sentenced to 40 years

In Los Angeles, 15 women and girls were forced by a family-run human trafficking organization into prostitution. As a result of the investigation, seven Guatemalan and two Mexican nationals were found guilty of conspiracy, sex trafficking of children by force, and importation and harboring of illegal aliens for purposes of prostitution and sentenced to terms of imprisonment ranging from two to 40 years depending on their level of involvement.

#### Traffickers Arrested in Hair Braiding Salon

In Newark, 20 young women and girls from Togo and Ghana were brought to the United States through a visa scheme, forced to work in hair braiding salons under appalling conditions, and subject to physical abuse and threats. Six traffickers from Togo entered guilty pleas or were convicted by a jury for offenses involving forced labor, conspiracy, document servitude, visa fraud, transportation of a minor across state lines to engage in criminal sexual activity, and alien smuggling.

#### Cooperation with Mexican Law Enforcement Rescues 24 Victims

In New York, an ICE-led investigation, in collaboration with the Government of Mexico, targeted a trafficking organization that smuggled Mexican women into the United States and then subjected them to commercial sexual exploitation. Twenty-four women were forced into prostitution at brothels on the East Coast through threats of violence against them and their children. The principal traffickers were sentenced to terms of imprisonment from 25 to 50 years each. The mother of the main defendants was arrested in Mexico and later extradited to the United States where she was sentenced to 10 years in prison for her involvement in the scheme.

#### Russian, Ukrainian and Czech Labor Trafficking Victims Rescued in Detroit

In Detroit, a concerned citizen reported women being forced to work against their will as exotic dancers. Ten women were brought to the United States through a visa fraud scheme where they were forced to work as dancers through threats of violence, sexual abuse, and threats of jail and deportation. The investigation resulted in the arrest and indictment of nine defendants. All of the defendants pleaded guilty and their sentences ranged from probation to 14 years imprisonment.

#### Domestic Servitude Victim Rescued on Long Island

On Long Island, ICE agents arrested a husband and wife as a result of a domestic servitude investigation. The couple was alleged to have held two Indonesian females in their residence where they were forced to perform domestic services. They were found guilty by a jury of forced labor, peonage, document servitude, harboring aliens and conspiracy. The wife was sentenced to 11 years imprisonment and her husband was sentenced to three years. The jury ordered that their residence, valued at \$1.5 million, be criminally forfeited in order to assist with victim restitution.



Homeland  
Security  
Blue Campaign

Report Suspicious Activity:  
1-866-DHS-2-ICE  
1-866-347-2423

[www.dhs.gov/humantrafficking](http://www.dhs.gov/humantrafficking)

01/2010



### The Facts about Continued Presence

**Fact:** CP applications should be submitted immediately upon identification of a victim regardless of whether or not the victim has cooperated. In some cases, due to the nature of trafficking crimes, victims are too traumatized to cooperate at the outset of an investigation; however, this should not preclude the submission of a CP application.

**Fact:** CP applications can be approved with an uncorroborated victim statement. A victim's statement alone is sufficient as long as the law enforcement official finds it credible under the circumstances.

**Fact:** CP approval is not dependant on the case being accepted for prosecution. A victim must only be a potential witness to the human trafficking crime.

**Fact:** CP approval is not dependant on human trafficking charges being brought. CP is available to all trafficking victims even if a human trafficking violation is not charged or if charges are never brought.

**Fact:** Deferred action should never be used in place of CP. Deferred action is a form of prosecutorial discretion, such as not pleading an individual in removal proceedings, and is done as an act of administrative convenience to the government. It precludes a victim from receiving TPA benefits and services.

**Fact:** CP does not require that the victim has suffered a violent form of human trafficking. Human traffickers may employ a range of non-violent forms of coercion to hold victims against their will such as threats of deportation, document control and psychological coercion.

**Fact:** CP is initially granted for one year and may be renewed in one-year increments. CP renewals are submitted by the federal law enforcement official and evaluated by their agency on a case-by-case basis.

**Fact:** CP can be revoked. If it is later determined that the individual is not a victim of human trafficking and/or is no longer a potential witness, CP can be revoked.

**Fact:** CP is not a guarantee of a long-term form of immigration status. Receipt of CP does not guarantee that USCIS will favorably adjudicate other long-term immigration status applications.

**Fact:** CP recipients are permitted to travel domestically and may have their family members join them in the U.S. At the discretion of the federal law enforcement official and their agency, a victim may be granted authorization to have their family member enter the U.S. to join them.

### Long-Term Immigration Status

Victims may qualify for other forms of immigration benefits depending on their unique circumstances. Law enforcement officials are encouraged to work with the local ICE victim assistance coordinator to obtain referrals to non-governmental victim service providers. These providers may offer a variety of services to assist crime victims such as immigration legal assistance, crisis intervention, counseling, medical care, housing, job-skills training and case management.

Trafficking victims are eligible to self-petition to USCIS for T and U nonimmigrant status which permits them to remain in the U.S. for up to four years and can lead to lawful permanent residence. These applications may require a law enforcement certification. Federal, state and local law enforcement should, upon request, provide law enforcement certifications for human trafficking victims. USCIS will complete a comprehensive review of these applications prior to adjudication.

### Important Numbers

ICE Law Enforcement Parole Branch:  
202-732-8164 (law enforcement only)

ICE Headquarters Victim Assistance:  
866-372-4973 or [victimassistance/ice@dhs.gov](mailto:victimassistance/ice@dhs.gov)

For human trafficking-related policy issues, please contact the ICE Headquarters Human Smuggling and Trafficking Unit at: [ICEHumanTraffickinghelpdesk@dhs.gov](mailto:ICEHumanTraffickinghelpdesk@dhs.gov)



Homeland Security  
Blue Campaign

Report Suspicious Activity:  
1-866-DHS-2-ICE (1-866-347-2433)  
[www.dhs.gov/humantrafficking](http://www.dhs.gov/humantrafficking)

09/2016

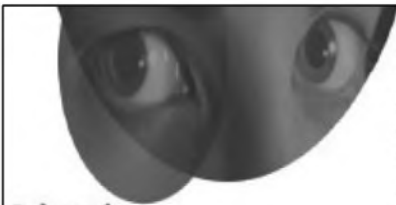


# Continued Presence

## Temporary Immigration Status for Victims of Human Trafficking



U.S. Immigration and Customs Enforcement



### Background

U.S. Immigration and Customs Enforcement (ICE) is the lead DHS law enforcement agency that investigates human trafficking crimes. ICE places a priority on human trafficking investigations, recognizes victims of human trafficking as crime victims and secures access for victims to the rights and benefits afforded them under the Trafficking Victims Protection Act (TVPA).

### Definition

Continued Presence (CP) is a temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking. This status allows victims of human trafficking to remain in the U.S. temporarily during the ongoing investigation into the human trafficking-related crimes committed against them. CP is initially granted for one year and may be renewed in one-year increments. CP is authorized under provisions of section 107(c)(3) of the TVPA, which has since been reauthorized, and is codified at 22 U.S.C. § 7105(c)(3).

### Importance of Continued Presence

CP is an important tool for federal, state and local law enforcement in their investigation of human trafficking-related crimes. Victims of human trafficking often play a central role in building a case against a trafficker. CP affords victims a legal means to temporarily live and work in the U.S., providing them a sense of stability and protection. These conditions improve victim cooperation with law enforcement, which leads to more successful prosecutions and the potential to identify and rescue more victims.

### How Is Continued Presence Requested?

Federal law enforcement officials, primarily from ICE and the Federal Bureau of Investigation as well as federal prosecutors from U.S. Attorney's Offices within the Department of Justice, are authorized to submit CP applications. An application for CP should be initiated immediately upon identification of a victim of human trafficking. All CP applications are submitted to the ICE Law Enforcement Parole Branch (LEPB).

Federal officials may submit CP applications on behalf of state or local law enforcement in cases where the victimization meets the federal definition of trafficking as found in the TVPA and at 22 U.S.C. § 7102. When state or local law enforcement officials identify a victim of human trafficking, they should coordinate with their federal law enforcement partners to submit an application for CP.

If required, CP renewals should be submitted by the federal law enforcement official thirty days prior to the one year expiration.

### Who Authorizes Continued Presence?

The LEPB has the sole authority to approve or deny CP applications. Those results are sent to the federal submitting official and, in cases of approval, to the Department of Health and Human Services (HHS) and the Vermont Service Center (VSC), a component of U.S. Citizenship and Immigration Services (USCIS).

Once notified, HHS issues a letter authorizing the victim to receive federal and state benefits.<sup>1</sup> Additionally, the VSC produces a Form I-94 (Arrival-Departure Record) and an Employment Authorization Document (EAD) for the federal submitting official to provide to the victim.<sup>2</sup>

<sup>1</sup> In contrast to adult victims, minor victims are not required to cooperate with law enforcement in order to receive these benefits.

<sup>2</sup> An EAD is issued in conjunction with all approved CP applications. This includes minor victims where the EAD is often used as an identity document.

Only the federal law enforcement official or assigned agency victim assistance coordinator can provide the victim or their representative updates on the status of pending CP applications. Because of the sensitivity and confidentiality protections afforded trafficking victims, CP applications are subject to several levels of review within the submitting federal agency before the application is received by the LEPB.

### Who Qualifies for Continued Presence?

An individual identified as a victim of human trafficking who is a potential witness in the investigation or prosecution of the trafficker. The federal law enforcement official makes the initial determination if the individual meets the definition of a victim of a severe form of trafficking in persons. Cooperation with law enforcement is not required for CP to be granted.



### Who Is a Victim of Human Trafficking?

An individual who has been exploited through:

- **Sex Trafficking** – a commercial sex act induced by force, fraud or coercion, or in which the person induced by any means to perform such act has not attained 18 years of age; or
- **Labor Trafficking** – the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.





### How You Can Help

All businesses that are involved in any aspect of high-technology research, development or production are potential targets and can be exploited. ICE solicits your assistance in providing information relating to any suspicious circumstances surrounding export transactions of high-technology items or services.

There are four major areas in which U.S. businesses can assist the government in stemming the illegal flow of equipment, technology and munitions to unauthorized destinations:

- Identifying inquiries and orders for production parts or technology that are likely to be shipped outside the United States, and ensuring that these transactions are reviewed by export specialists;
- Ensuring that your export specialists understand export controls and follow appropriate screening and licensing procedures;
- Making certain that employees—whether they live, travel or transmit information abroad, or merely come into contact with foreigners visiting the United States—fully understand that the U.S. government restricts the flow of certain technical data or know-how, whether in written, oral or visual form; and
- Ensuring that suspicious contacts are reported to ICE as quickly as possible (see back panel: Indications of Potential Illegal Exports).

### Indications of Potential Illegal Exports

- Customer pays in cash.
- Customer makes payments in excess of item's market value.
- Purchaser is reluctant to provide information about item's end-use.
- Item is incompatible with stated end-use.
- Item does not correspond with customer's line of business.
- Final consignee has no apparent connection to the purchaser.
- Item is inappropriately or unprofessionally packaged.
- Packaging is inconsistent with shipping mode, destination or product description.
- Order is placed by firm or individuals from foreign countries other than the country of the stated end-use.
- Shipping route is abnormal for the product and destination.
- A freight forwarding firm is listed as final destination.
- Customer declines routine installation, training or maintenance services.
- Customer has little or no business background or is unfamiliar with item.
- Transaction just does not make sense.



## Shield America

A Partnership to Protect America



U.S. Immigration and Customs Enforcement

Report Suspicious Activity:  
1-866-DHS-2-ICE  
1-866-DHS-2-423  
[www.ice.gov](http://www.ice.gov)



U.S. Immigration and Customs Enforcement

01/2009



### Shield America

Shield America is an industry outreach and enforcement initiative developed by U.S. Immigration and Customs Enforcement (ICE) to prevent the illegal export of sensitive U.S. munitions and strategic technology to terrorists, criminal organizations and foreign adversaries.

Led by ICE's Counter-Proliferation Investigations (CPI) unit, Shield America is an integral part of the ICE strategy to combat the trafficking in Weapons of Mass Destruction (WMD) and their components, as well as the trafficking in conventional weapons and controlled technology. Working in partnership with U.S. Customs and Border Protection (CBP) and U.S. companies that manufacture, sell or export strategic technology and munitions, Shield America is the first line of defense against those who compromise U.S. security or interests by violating export laws, sanctions or embargoes.

### Why It's Needed

Since World War II, foreign adversaries of the United States have acquired large quantities of U.S. and western technology by various means, both legal and illegal. Such acquisitions have provided these countries with the fruits of U.S. research and strategic technology largely without cost, while compromising U.S. security and military superiority. In some instances, U.S. weapons and technology have been used against American soldiers, citizens and allies. In today's globalized world, enhanced communications technology and transportation mean that rogue states, criminal organizations and terrorist groups have greater potential to acquire and trade nuclear, chemical and biological weapons than ever before.

### Illegal Exports: The Scope of the Problem

As with any illegal trade, the exact volume of illegal exports in strategic technology and munitions is difficult to measure or even to estimate. ICE criminal investigations and seizures indicate that such trade can be valued in the tens of millions of dollars annually. But the monetary value of these illegal exports is secondary to the potential strategic and military value of these products.

Some of the strategic technology most urgently desired by proscribed countries includes:

- modern manufacturing technology for the production of microelectronics, computers, digital electronic components and signal processing systems;
- technology for developing aircraft, missile and other tactical weapon delivery systems;
- all types of advanced signal and weapons detection, tracking and weapons monitoring systems;
- night vision technology;
- technology and equipment used in the construction of nuclear weapons and materials; and
- biological and chemical warfare agents and their precursors.

### How Shield America Works

Shield America is a four-pronged program for export enforcement and industry outreach.

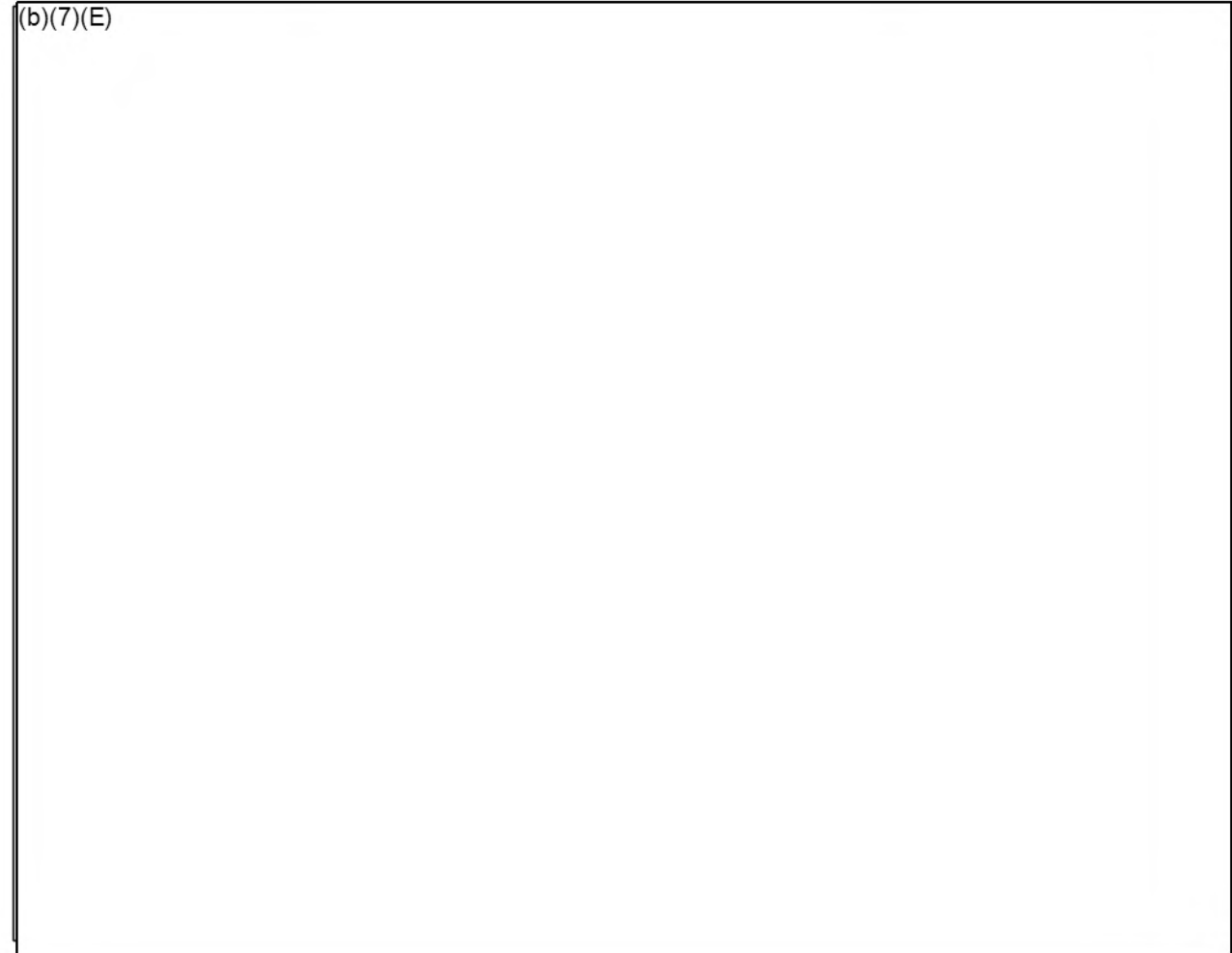
- **Inspection and Interdiction.** Specially-trained CBP officers inspect outbound shipments for violations of U.S. export laws and report violations to ICE for investigation.
- **Investigations.** ICE special agents investigate export violations, seize illegal shipments of controlled technology and munitions and pursue the arrest, prosecution and conviction of violators.
- **Industry Outreach.** ICE agents conduct outreach visits with industry officials to educate them about U.S. export laws and to solicit their assistance in preventing illegal foreign acquisition of their products.
- **International Cooperation.** ICE attachés in foreign countries enlist the support of their host governments to initiate investigative leads and to develop information in support of ongoing domestic investigations. ICE also supports the Proliferation Security Initiative (PSI), which was formed to increase international cooperation in interdicting illegal shipments of weapons of mass destruction (WMD), their delivery systems, and related materials.

The efforts are all supported by the Exodus Command Center located in Washington, D.C. The center maintains contacts with the U.S. departments of Commerce, State, Defense and other agencies concerned with the export of strategic materials, technologies and services.

## Shield America: A Partnership to Protect America



(b)(7)(E)





U.S. Immigration and Customs Enforcement
Homeland Security Investigations
500 12th Street, SW
Washington, D.C. 20536



Homeland Security

MANDATORY TRACKING REQUIREMENTS

Date: 00/00/0000 (Case #: \_\_\_\_\_)
To: Control Officer Fax:
From: Unit Chief, Law Enforcement Parole Unit

Please be advised that Continued Presence (CP) has been authorized until \_\_\_\_\_ for the following individual(s):
SUBJECT'S NAME: DOB: COB: A.#:

The victim is willing to assist in every reasonable way in the investigation and prosecution of a severe form of trafficking in persons.

As the control officer, you are required to take the following steps and return this notice as directed by the U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Law Enforcement Parole Unit (LEPU). Please fax information to (b)(7)(E) and to your Headquarters point of contact (POC) (if applicable). If you have any questions, please call (b)(7)(E)

- 1. Update and return this document as soon as the victim adjusts to an immigration status (for example, "T nonimmigrant status"), absconds, or departs no later than the expiration date of parole.

(State the reason for the update. Example: (b)(7)(E))

(b)(7)(E)

- 2. If the alien's presence is still required beyond the initial parole period, you must request an extension 30 days prior to the expiration date. The extension request requires the submission of a new CP Packet to this office through your HQ POC (if applicable). For victims whose authorized CP has expired more than 30 days, a Notice to Appear (DHS Form I-862) will be requested from the local ICE HSI field office.
3. Your Victim-Witness Coordinator is \_\_\_\_\_
4. If the Control Officer changes, you must fax this document to this office with the new Control Officer's name, e-mail address, and phone and fax numbers.

Name: Phone: Fax:

E-mail:

- 5. When the alien departs the U.S., you must fill in the date of departure and fax this document back to this office. The alien departed the U.S. on (Date) via (Departure point/flight#)

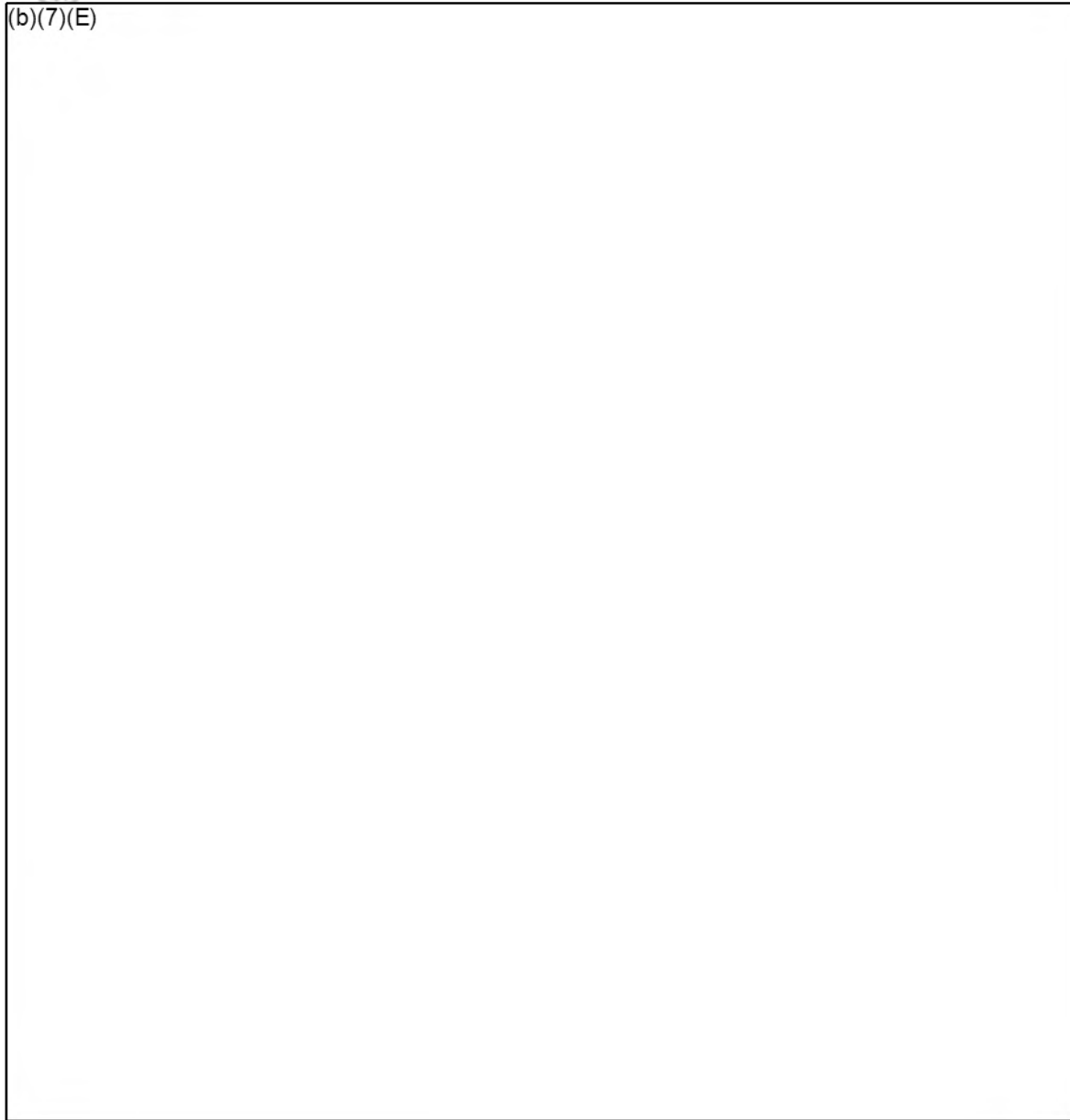
Control Officer's Signature

Date

Mandatory Tracking Requirements
FOR OFFICIAL USE ONLY / LAW ENFORCEMENT SENSITIVE



(b)(7)(E)





## Traffic Stop Checklist

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of the Freedom of Information and Privacy Act

Page 1245

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of the Freedom of Information and Privacy Act



Page 1246

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