



## FUGITIVE INVESTIGATIONS

### *Criminal Investigations*

#### 8.12 Undercover Fugitive Operations

- A. Purpose:** This directive sets forth the policy and procedures for conducting undercover fugitive investigations by the United States Marshals Service (USMS). Investigations authorized by the Attorney General or Federal law may require the use of sensitive methods and strategies or involve sensitive targets. These investigations must be planned and properly authorized before implementation. Undercover investigations may involve the use of deception by the USMS and other law enforcement officials or by cooperating individuals whose motives may be questionable. For these reasons, it is necessary to ensure that undercover investigations are properly authorized and monitored at all times.
- B. Authority:** The Director's authority to direct undercover investigations is set forth in 28 USC 561, and 28 CFR 0.111.
- C. Policy:** The USMS may conduct undercover investigations that are appropriate to carry out its law enforcement responsibilities. Undercover investigations will be properly authorized and monitored. USMS personnel serving on task forces may work undercover assignments only in support of USMS related cases unless specifically authorized by IOD.
1. **Authorization:** All undercover investigations are classified into one of four approval categories:
    - a. United States Marshal (USM) authorization;
    - b. USMS Headquarters, Investigative Operations Division (IOD) authorization;
    - c. Undercover Review Committee (URC); or
    - d. Emergency authorization.
  2. **Undercover Investigations That May Be Authorized By The U.S. Marshal:** The U.S. Marshal may approve these undercover investigations:
    - a. Undercover investigations of five consecutive days or less in duration; or
    - b. Undercover investigations of \$500.00 or less in funding expenditure.
  3. **Undercover Investigations That Require IOD Approval:** Undercover investigations with any of the following characteristics must be approved by the IOD Assistant Director:
    - a. In excess of five calendar days in duration or \$500.00 in funding expenditure
    - b. Any type of fugitive sting or scam operation
    - c. The involvement of a Bureau of Prisons (BOP) or USMS prisoner in an undercover investigation (refer to USMS directive *Investigative Use of Persons in Custody*)
    - d. The purchase or lease of property, equipment, buildings or facilities; the alteration of

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buildings or facilities; or prepayment of more than one month's rent. This does not include the purchase of services of less than \$500.00, such as the rental of a hotel room to facilitate a physical or technical surveillance

- e. Reimbursement to cooperating individuals or entities for services or losses incurred by them in aid of the operation
- f. Any joint undercover investigation in which the USMS will participate with another federal, state, or local law enforcement agency in shared responsibility and jurisdiction
- g. Any joint undercover investigation that will be the primary responsibility and jurisdiction of another federal, state, or local law enforcement agency

4. **Undercover Review Committee Approval:** All undercover investigations involving any of the **sensitive** circumstances listed below will require approval of the URC:

- a. Investigations involving any elected or appointed public official, or political candidate for a judicial, legislative, management, or executive level position of trust in a federal, state or local government entity or political subdivision thereof
- b. Investigation involving possible criminal misconduct by a foreign official, governmental, religious or political organization, school, or the news media
- c. Activity that significantly intrudes into the legitimate operation of a federal, state, or local government entity
- d. Providing goods or services that are essential to the commission of a crime, which are reasonably unavailable to a subject of the investigation except from the government
- e. Activity that federal, state or local law proscribes as a felony or a serious crime (This does include the purchase of stolen goods or contraband and the delivery or sale by the government of stolen property whose ownership cannot be determined)
- f. Payments of bribes that are not included in other sensitive circumstances
- g. A significant risk that a participating person will be arrested or will provide falsely sworn testimony or false documentation in any legal or administrative proceeding
- h. Attendance in any meeting or participation in communications between any individual and his or her attorney
- i. A significant risk that a third party will enter a professional or confidential relationship with a person participating in an undercover operation who is acting as an attorney, physician, a member of the news media or clergy
- j. Involvement with the activities of a group under a domestic security investigation in which the USMS is participating or recruiting a person from within such a group as an informant
- k. Untrue representations by a person participating in the undercover investigation concerning the activities or involvement of any third person without that individual's knowledge or consent
- l. Activities that could result in significant claims against the United States arising in tort, contract, or for compensation for the taking of property
- m. Investigations involving significant risk of violence, physical injury, or financial loss to individuals
- n. International fugitive lures can involve sensitive foreign sovereignty issues and, absent careful advance coordination and planning, may adversely impact U.S. law enforcement

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interests. Accordingly, all lure operations, including those which do not involve direct contact with U.S. law enforcement personnel or confidential sources, must be reviewed and approved by the URC prior to implementation.

5. **Emergency Authorization:** An emergency may involve a threat to life, a serious judicial threat, a high profile fugitive investigation, or other critical situation. If it is determined that an investigative opportunity would be lost due to time required for preparation of a written undercover operational plan and IOD review, the U.S. Marshal may request an emergency authorization. The U.S. Marshal **cannot** initiate an emergency undercover investigation without IOD approval. The following are procedures to obtain emergency approval:
  - a. Upon identifying the need for an emergency authorization the U.S. Marshal or designee will immediately contact the IOD, which will convene a telephonic conference with the submitting district.
  - b. Before granting emergency authorization, the U.S. Marshal or designee will contact an appropriate Assistant United States Attorney (AUSA) regarding the plan.
  - c. If the undercover operation involves any of the sensitive circumstances outlined in C.4. the Assistant Director, IOD will notify the Director or Deputy Director, General Counsel, and the DOJ Criminal Division point of contact. In these circumstances, emergency approval will not be granted without the concurrence of the DOJ Criminal Division.
  - d. An after action report to include the application for the undercover operational plan will be submitted to IOD within 48 hours of the initiation of the emergency undercover investigation.
6. **Undercover Identification:** Obtaining and using an official undercover identity **outside** of an undercover investigation must be approved by both the USM and IOD. This does not apply to Witness Security program activities or undercover identities used during an approved undercover investigation. Examples of an undercover identities are alias drivers' licenses and social security cards.

#### D. Procedures

1. **Determining Factors:** The following factors must be considered before the implementation of an undercover investigation:
  - a. The risk of injury to individuals, property damage, financial loss to persons or entities, damage to reputation or other harm to persons
  - b. The likelihood that a Confidential Informant (CI ) used in an investigation will require admission into the Federal Witness Security Program or other special security measures
  - c. The risk of civil liability or other loss to the government
  - d. The risk of an invasion of privacy or interference with privileged or confidential relationships
  - e. The risk that individuals engaged in undercover operations may become involved in illegal conduct
  - f. The suitability of Government participation in the type of activity expected to occur during the operation
2. **Requirements to Initiate a Proposed Undercover Investigation:** A written undercover operational plan is required for all undercover investigations. Undercover operational plans requiring IOD approval will be submitted to IOD **at least 15 calendar days** before the initiation of the proposed action. Undercover operational plans will be submitted on the USM Form-11 and include the following:

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- a. Description of the proposed action and why it is needed
  - b. The duration, funding, and resources
  - c. Background and description of the target(s)
  - d. Participation of other law enforcement agencies, to include name and title of each participant
  - e. The use and role of any CI and any required Office of Enforcement Operations (OEO) approval
  - f. Name and recommendation of the involved AUSA
  - g. Any illegal acts to be committed by a CI or undercover agent (e.g., providing false identification, purchase of stolen property, etc.)
  - h. In foreign investigations, detail adherence to the directive *Extraterritorial Investigations*
  - i. Any significant media attention
  - j. Name and title of participating or supervisory USMS management officials
3. **Duration of Authorization:** An undercover investigation will last no longer than is necessary to achieve the objectives contained in the application. An undercover investigation may not last longer than thirty days without renewed IOD authorization. If there is significant change from either the direction or objectives of the approved action, the undercover investigation must be re approved by the IOD. The IOD will consider the following for an extension of an undercover investigation:
- a. The extent to which the operation has produced the results anticipated when they established it
  - b. The potential for future success beyond that originally targeted
  - c. The extent to which the investigation can continue without exposing the operation
  - d. The extent to which the continuation of the investigation may cause injury, financial or otherwise, to innocent parties
4. **Preparation of Undercover Employees, Cooperating Witnesses and Confidential Informants:** Prior to the undercover investigation, the U.S. Marshal or designee will review with the undercover employee, cooperating witness, and CI, the conduct that he or she is expected to undertake during the investigation. The U.S. Marshal or designee will discuss with each undercover employee, cooperating witness and CI any sensitive circumstances that may occur as specified in this directive. Each undercover employee will be instructed that he or she **will not**:
- a. Participate in any act of violence except in self-defense
  - b. Initiate or instigate plans to commit criminal acts
  - c. Engage in any conduct that would violate the Attorney General's Guidelines on Undercover Investigations or Departmental Policy
  - d. Participate in conduct that would constitute unlawful investigative techniques e.g., illegal wiretapping, breaking and entering, or trespass amounting to an illegal search)
  - e. When an undercover employee learns that persons under investigation intend to commit a violent crime, he or she will try to deter or discourage the violence
5. **Exceptions:** Except in an emergency situation, an undercover employee will not participate in

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any illegal activity for which authorization has not been obtained. Nothing in these guidelines prohibits an undercover employee from taking reasonable measures of self-defense in an emergency to protect his or her own life or the lives of others against wrongful force. Any such measures will be reported to the IOD who will inform the Assistant Attorney General for the Criminal Division or designee.

6. **Illegal Activity By Undercover Employees Requires DOJ Approval:** Unless authorized pursuant to this directive, no undercover employee will engage in any activity that would violate a federal, state or local law if engaged in by a private person without DOJ authorization. No USMS official will recommend the participation by an undercover employee in illegal activity unless justified under the following conditions:
  - a. To obtain information or evidence for success of the investigation that is not reasonably available without participation in the illegal activity
  - b. To establish or maintain credibility of a cover identity
  - c. To prevent death or seriously bodily injury
7. **Review of Conduct:** At any time during an undercover investigation, the U.S. Marshal, IOD or any other senior level reviewing official as designated by the IOD can review conduct of undercover employees or other participants in the operation. Any complaint or issues of conduct will be discussed with the individual and reported to IOD immediately to determine whether that individual may continue to participate in the operation.
8. **Undercover Identification:** A written request is required to obtain and use an undercover identity in a non-undercover investigation. The request must be on a USM-11 and include the following:
  - a. Approval of USM or designee
  - b. Type of identity document(s) to be used
  - c. Name of Deputy U.S. Marshal(s)
  - d. Purpose needed
  - e. Duration needed

#### E. Responsibilities

1. **U.S. Marshal / Districts:** The U.S. Marshal or designee will:
  - a. Coordinate investigation with the AUSA
  - b. Provide weekly reports to the IOD
  - c. Provide a closing report to the IOD
  - d. Ensure the undercover investigation remains within the scope of the objectives, undercover guidelines, and authorization
  - e. Maintain accountability of funds
  - f. Notify the IOD of any change or deviation from the original undercover operational plan
  - g. Provide the IOD with a list of subjects targeted or arrested
  - h. Submit an after action report at the conclusion of the investigation
  - i. Review and approve requests for use of undercover identities in non-undercover

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2. **Investigative Operations Division:** The IOD will:
  - a. Monitor operation through weekly reports or as necessary
  - b. Determine if the use of a CI in an undercover capacity requires OEO approval
  - c. Provide annual reports to OEO
  - d. Review and approve requests for electronic surveillance, and refer to the U.S. Attorney's Office (USA) when appropriate
  - e. Review and approve undercover funding, personnel and resources
  - f. Review closing reports and coordinate press releases with the District, Public Affairs, and Congressional Affairs
  - g. Review undercover operational reports for compliance of objectives, policies, and authorization
  - h. When required present undercover investigations to the DOJ, Criminal Division
  - i. Review and approve requests for use of undercover identities in non-undercover investigations
  - j. Compile statistics

#### F. Definitions

1. **Undercover Investigation:** Any investigation requiring U.S. Marshal or IOD approval as outlined in this directive. This includes, but is not limited to any sting or scam operation.
2. **IOD Approval:** All undercover investigations requiring USMS Headquarters approval as outlined in this directive, will be submitted to IOD. Before granting approval, IOD will seek the legal advisement of General Counsel on all cases. The IOD Assistant Director or designee may approve any undercover investigation as outlined in this directive.
3. **Undercover Review Committee Approval:** All undercover investigations involving any of the sensitive circumstances outlined in this directive, will require the approval of the URC. The URC will consist of members of the IOD, OGC, and Criminal Division of the Department of Justice. The Deputy Director will be briefed on all cases submitted to the URC.

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