

FILED
AUG 10 2026
KITSAP COUNTY CLERK
DAVID T. LEWIS III

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

No. 25-1-01060-18

v.

STATE'S RESPONSE Re: MOTION TO
SUPPRESS AND DISMISS UNDER 18
U.S.C. § 1385 POSSE COMITATUS ACT

HOUSTON CURRY WADE,
Age: 45; DOB: 05-22-1981,

Defendant.

COMES NOW State of Washington through Deputy Prosecutor Breanna Wilson respectfully requesting Defendant's motion to suppress and dismiss be denied because it is based on a misapplication of federal law and cannot be reconciled with Washington precedent.

I. INTRODUCTION

Defendant incorrectly claims a civilian special agent of the Naval Criminal Investigative Service (NCIS) violated the federal Posse Comitatus Act (PCA) by continuing voluntary internet chats with a profile identified as a minor-Navy dependent and turning evidence of his attempt to have sex with that minor over to the Bremerton Police Department (BPD). Washington's appellate courts have found more direct involvement in local law enforcement by *civilian* NCIS agents to be permissible indirect



support outside limits placed on *military* personnel by the PCA. Washington's appellate courts have likewise declined to apply the extra-statutory remedy of suppression Defendant wrongly claims is "required" under Washington law based on an outdated Ninth Circuit case from 2015 that he mistakenly characterizes as "binding" authority. Defendant lastly incorrectly frames all evidence as fruits of the alleged PCA violation, which ignores the independent free will of cooperating victims who were later discovered.

II. ISSUES PRESENTED

- A. Should Defendant's motion to suppress be denied as a misapplication of the PCA, which neither applies to civilian NCIS agents nor could be violated by NCIS providing local police internet chats Defendant voluntarily participated in with a civilian agent he believed to be a minor-Navy dependent he targeted for sexual abuse? Answer – Yes.
- B. Has Defendant similarly misidentified suppression as available relief for the claimed PCA violation when suppression exceeds the limited remedies of fine and imprisonment explicitly selected by Congress whose intent in this regard has been properly honored by courts in Washington and beyond? Answer – Yes.
- C. Does Defendant err in framing all evidence in the case as derived from his online efforts to sexually abuse a minor-Navy dependent since his commercial sexual abuse of a minor can be proved through the independent source of his then child victim? Answer – Yes.

III. RELEVANT BACKGROUND

On August 29, 2025, Special Agent (SA) Kelsey Main, posing undercover, responded to a social media post on Hush¹. Appendix A at 2. The original post was made

¹ Hush is self-described as an "anonymous social media app that allows you to express yourself freely without fear of judgment or exposure." <https://hush.ac>



1 by the screenname "AuthorityFigure", which BPD's independent investigation later tied
2 to the Defendant. *Id.* The post stated, "The best part about teaching is the students". *Id.*
3
4 Special Agent Main's undercover persona was an 11-year-old female defendant of a U.S.
5 Navy Sailor. *Id.*
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7 Chat's between "AuthorityFigure" and SA Main's undercover persona of an 11
8 year old U.S. Navy dependent continued, transitioning to the platform Kik² the same day.
9
10 *Id.* On Kik, the username of "AuthorityFigure" was "pulse_of_life" and his display name
11 was "The Captain". *Id.* That title has special significance in the Navy. Captain is the 21st
12 rank in the United States Navy , ranking above Commander and directly below Rear
13 Admiral Lower Half.³ Navy captains can hold a variety of high-level leadership positions,
14 including: command of a Navy cruiser or larger ship, command of a ballistic missile
15 submarine, or a squadron of attack submarines, command of a Naval Air Wing based on
16 an Aircraft Carrier or amphibious assault vessel, command of a variety of shore-based
17 installations such as bases or Naval schools, senior staff leadership positions in a variety
18 of contexts. Captains have a great deal of autonomy in commanding their vessels, and
19 those who prove their leadership and dedication over several years of service may be
20 rewarded by receiving command of a larger and more important vessel or installation.
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26 "The Captain" began to groom the 11 year old quickly, commenting on how
27 beautiful she would look curled up with a book, telling her she was "definitely a looker",
28 noting he was a fan of her pigtails, and saying "this significantly older man is telling you
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32 ² Kik is self-described as "an iOS and Android app that lets you connect with friends and
33 groups from all around the world through messaging, chatting, and live streaming". *What*
34 *is Kik?*, help.kik.com.

³ www.military-ranks.org/navy/captain.



that you are beautiful". Appendix A at 2. He expressed sexual interest in the 11 year old he believed he was chatting with and described the sexual encounters he wanted to engage in with her multiple times. *Id.* In the beginning of the conversation, SA Main identified the 11 year old to the Defendant as a dependent of a U.S. Sailor. She told the Defendant that her mother is a Sailor with the U.S. Navy. Defendant acknowledged this status, asking in chats how she is fairing during the government shutdown. During that period, it was reported as doubtful service members would receive pay on November 15, 2025, unless the shutdown ended.⁴

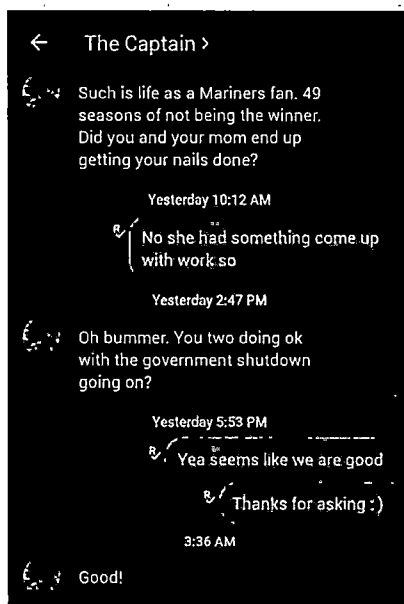


Figure 1: Screenshot of Kik messages between the Captain and SA Main undercover

On November 2, 2025, the Defendant asked the 11-year-old when they were going to "hang out" and expressed excitement to see her. *Id.* at 3. On November 3, 2025, SA

⁴www.militarytimes.com/pay-benefits/mil-money/2025/10/31/troops-have-been-paid-again-but-what-comes-next/; <https://mymilitarybenefits.com/benefits/military-and-veteran-services-affected-by-the-government-shutdown>.



1 Main emailed BPD that she was chatting with an individual who expressed interest in
2 meeting her. *Id.* at 2. On November 24, 2025, SA Main met with BPD Detective Brandon
3 Smith. *Id.* at 7. At this time, SA Main had not identified the suspect. *Id.* at 8. The two
4 agreed that the chats between SA Main's undercover persona and Defendant constituted
5 probable cause for a violation of RCW 9.68A.090 and worked on a plan for BPD to arrest
6 Defendant. *Id.* at 9.

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10 SA Main continued to chat with the suspect until a meeting could be coordinated
11 where BPD could arrest the suspect. BPD was able to identify the suspect through some
12 images he had sent SA Main. On November 25, 2025, SA Main documented her chats and
13 sent BPD that information. Using this information, the BPD applied for and was granted
14 several search warrants, including the pulse_of_life Kik account, electronic tracking, and
15 Comcast IP address. *Id.* at 9. NCIS did not apply for any search warrants, secure any
16 administrative subpoenas, nor even place any preservation requests related to this case.
17 Between November 24 and December 17, 2025, BPD identified Defendant's significant
18 online presence through open sources. *Id.*

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23 SA Main continued the chats with Defendant while working with BPD to schedule
24 a meeting with Defendant where he would ultimately be arrested by BPD. SA Main as the
25 minor-Navy dependent and Defendant initially planned a meeting on December 11, 2025.
26 *Id.* However, BPD had logistical issues. *Id.* SA Main rescheduled for December 17, 2025.
27 *Id.* at 3.

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30 On December 17, 2025, BPD surveilled the defendant while he left his residence
31 at approximately 3:11 PM. *Id.* BPD saw Defendant stop at the Quality Inn in Silverdale
32 and later learned he had checked into Room 110 and left a backpack there. *Id.* BPD was
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1 granted a telephonic search warrant for the hotel room and located a variety of sexual
 2 paraphernalia consistent with the different sexual acts Defendant suggested in the chats
 3 with SA Main's undercover persona. *Id.* BPD continued to surveil Defendant as he left
 4 the hotel and made his way toward the location of the meet, a local skate park. *Id.* at 3-4.
 5 When Defendant arrived at the skate park, he was taken into custody. *Id.* at 4. Defendant
 6 confirmed his targeting of Navy dependents in his statement, though he claimed to be
 7 looking for casual sex with adult dependents of deployed sailors instead of admitting he
 8 was actually targeting their minor children for sex. *Id.* at 15.

9
 10 Through the search warrants BPD was granted in this case, they were able to identify
 11 minor victims the defendant had attempted to sexually exploit. *Id.* at 9; 18-19. These
 12 search warrants in part relied on SA Main's chats with Defendant. *Id.* at 9. Through these
 13 search warrants, BPD identified multiple additional victims of Defendant's actions. One
 14 victim identified was R.S. 12/20/2005. *Id.* at 19. R.S. voluntarily disclosed to law
 15 enforcement that she and Defendant initially messaged over Instagram. *Id.* During their
 16 messaging Defendant encouraged her to send him "dirty" images and videos of her. In
 17 response to the Defendant's request of "[g]ive me a dirty one of you at school", R.S. sent
 18 a topless photo of herself while at school. *Id.* at 20. In response to receiving the photo, the
 19 Defendant told her "Your beautiful! ...you should film yourself making a mess at school".
 20 *Id.* The next day, R.S. sent the Defendant a photo of herself masturbating. *Id.* She went
 21 with him to a Tacoma hotel, where they had sex. *Id.* at 19. R.S. was 16 years old at the
 22 time. *Id.* Defendant promised R.S. gifts and money as consideration and encouraged R.S.
 23 to recruit younger girls for him. *Id.* Other victims were also identified who Defendant
 24 attempted to sexually exploit. *Id.* at 20.



IV. ARGUMENT & AUTHORITY

Defendant's motion is based on misapplication of the PCA (18 U.S.C. § 1385) with related provisions of federal law and policy to civilian NCIS agents who indirectly assist local law enforcement. He then incorrectly adds to the PCA's plain language a remedy—suppression—Congress did not intend. The PCA, first enacted in 1878 as a result of Reconstruction politics, was intended to halt the use of military forces in aid of civil law enforcement officials. Prior to its enactment, the use of military troops had become a common method of assisting civilian officials in suppressing illegal whiskey production, quelling labor disturbances, and ensuring the sanctity of the electoral process in the South by posting guards at polling places. *See United States v. Thompson*, 30 M.J. 570, 572 (1990); *City of Airway Heights v. Dilley*, 45 Wn. App. 87, 90, 724 P.2d 407 (1986). In its current form as 18 U.S.C. § 1385, the Act reads:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army, the Navy,⁵ the Marine Corps, the Air Force, or the Space Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.

The “fundamental objective [of Washington courts] when interpreting a federal statute is to ascertain Congress’s intent.” *Hous. Auth. Of Cnty of King v. Knight*, 4 Wn.3d 324, 331, 563 P.3d 1058 (2025). Traditional rules of statutory interpretation apply. *Id.* When statutory language is plain on its face, [courts] give effect to that plain meaning as an expression of legislative intent.” *Id.* “A statute’s plain meaning may be discerned from all that the Legislature has said in the statute and related statutes.” *Id.* Courts “look to the language of a statute, the context in which the provision is found, related provisions, and

⁵ Defendant incorrectly states the PCA “does not extend to the Navy by its terms.” Def.Br. at 4, ln, 15-16.



1 the statutory scheme as a whole.” *Id.* “[T]he goal is to avoid interpreting statutes to create
2 conflicts between different provisions, so that [courts] achieve a harmonious statutory
3 scheme. *Freedom Fund v. Wash. State Dep’t of Transp.*, 168 Wn. App. 278, 290, 276 P.3d
4 341 (2012). Statutes are also interpreted to avoid rendering any provision meaningless or
5 superfluous. *Knight*, 4 Wn.3d at 336.
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8 **A. DEFENDANT’S MOTION SHOULD BE DENIED SINCE IT REFLECTS**
9 **MISAPPLICATION OF THE PCA WHICH DOES NOT APPLY TO**
10 **CIVILIAN NCIS AGENTS AND COULD NOT BE VIOLATED BY NCIS**
11 **PROVIDING LOCAL POLICE CHATS DEFENDANT VOLUNTARILY**
12 **ENGAGED IN WITH A CIVILIAN AGENT BELIEVED TO BE A MINOR-**
13 **NAVY DEPENDENT DEFENDANT TARGETED FOR SEXUAL ABUSE.**

14 The substantive claims of Defendant’s motion should fail because the civilian
15 NCIS agent at issue is not military personnel to whom the PCA applies and because the
16 voluntary internet chats turned over to law enforcement would not be prohibited direct
17 assistance if the PCA applied.
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20 **1. THE PCA DOES NOT APPLY TO CIVILIAN NCIS AGENTS BECAUSE**
21 **NCIS IS A CIVILIAN LAW ENFORCEMENT AGENCY ONLY**
22 **ANSWERABLE TO CIVILIAN AUTHORITY.**

23 As need for increased cooperation between military and civilian law enforcement
24 agencies rose steadily, military and civilian officials were left to interpret the PCA and its
25 parameters without much guidance. *Thompson*, 30 M.J. at 573. Recognizing this problem
26 and spurred mainly by the belief law enforcement cooperation was critical to effectively
27 combatting the rising tide of drugs smuggled into the United States, Congress attempted
28 to clarify the intent of the PCA through the enactment of a new Chapter in Title 10 of the
29 United States Code—Chapter 18, Military Cooperation with Civilian Law Enforcement
30 Officials, consisting of 10 U.S.C. sections 371-378. *Thompson*, 30 M.J. at 573 (*citing see*
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1 1981 U.S. Code Cong. and Adm. News, p. 1781, 1785). The scheme has been recodified
 2 as Chapter 15—*Military Support for Civilian Law Enforcement Agencies* (§ 271 to § 284)
 3 (emphasis added). Federal courts have looked at section headings in federal legislation for
 4 clues to congressional intent. *Knight*, 4 Wn.3d at 333 (cleaned up). The National Defense
 5 Authorization Act, Fiscal Year 1989 (P.L. 100-456, Sept. 29, 1988), amended those
 6 provisions to authorize a greater cooperation as a reflection of the escalating “war” against
 7 drugs. *Id.* As currently written, **10 U.S.C. § 275 Restriction on direct participation by**
 8 **military personnel** provides:

12 The Secretary of Defense shall prescribe such regulations as may be
 13 necessary to ensure that any activity (including the provision of any
 14 equipment or facility or the assignment or detail of any personnel) under
 15 this chapter *does not include or permit direct participation by a member of*
 16 *the Army, Navy, Air Force, or Marine Corps* in a search, seizure, arrest, or
 17 other similar activity unless participation in such activity by such member
 18 is otherwise authorized by law.

18 *Id.* (emphasis added). The term “member of the naval service” means a person appointed
 19 or enlisted in, or inducted or conscripted into, the Navy or the Marine Corps. 10 U.S.C.A.
 20 § 8001 (3). “Where a statute specifically designates things or classes of things upon which
 21 it operates, an inference arises in law that all things or classes of things omitted from it
 22 were intentionally omitted by the legislature under the maxim *expressio unius est exclusio*
 23 *alterius*—specific inclusions exclude implication.” *Landmark Dev., City of Roy*, 138
 24 Wn.2d 561, 571, 980 P.2d 1234 (1999).

28 Fatal to Defendant’s claim is that the Washington Supreme Court has already held
 29 civilian NCIS agents employed by Department of Defense are not naval service members
 30 before subsequent legislative and regulatory developments even further removed NCIS
 31 from military control. *State v. Short*, 113 Wn.2d 35, 39, 775 P.2d 458 (1989). For example,
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1 1990 Congress amended § 275 as originally drafted to remove “civilian law enforcement
2 official” from its application.⁶ Thus, the legislature unquestionably knew how to signal
3 its intent with respect to civilian law enforcement.
4

5 Meanwhile, Congress since⁷ vested civilian NCIS agents with civilian federal law
6 enforcement authority and the DOD with Navy siloed them under civilian control.
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8 **10 U.S.C. § 8750. Special agents of the Naval Criminal Investigative**
9 **Service: authority to execute warrants and make arrests**

10 (a) Authority. --The Secretary of the Navy may authorize any Department
11 of the Navy civilian employee described in subsection (b) to have the same
12 authority to execute and serve warrants and other processes issued under the
13 authority of the United States and to make arrests without a warrant as may
14 be authorized under section 1585a of this title for special agents of the
15 Defense Criminal Investigative Service.

16 (b) Agents to have authority. --Subsection (a) applies to any employee of
17 the Department of the Navy who is a special agent of the Naval Criminal
18 Investigative Service (or any successor to that service) whose duties include
19 conducting, supervising, or coordinating investigations of criminal activity
20 in programs and operations of the Department of the Navy.

21 (c) Guidelines for exercise of authority.--The authority provided under
22 subsection (a) shall be exercised in accordance with guidelines prescribed
23 by the Secretary of the Navy and approved by the Secretary of Defense and
24 the Attorney General and any other applicable guidelines prescribed by the
25 Secretary of the Navy, the Secretary of Defense, or the Attorney General.

26 (emphasis added). Civilian NCIS agents now unambiguously fall under the authority of a
27 civilian Director⁸ who reports to and may only be overridden by the civilian Secretary of
28

29 ⁶ NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1990 AND 1991, PL 101-189,
30 November 29, 1989, 103 Stat 1352 SEC. 1211. RESTRICTION ON DIRECT PARTICIPATION BY
31 MILITARY PERSONNEL Section 375 of title 10, United States Code, is amended—<< 10 USCA § 375
32 << 10 USCA § 375 >> (2) by striking out “to any civilian law enforcement official”

33 ⁷ Added Pub.L. 106-398, § 1 [Div. A, Title V, § 554(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-126, §
34 7480; renumbered § 8750, Pub.L. 115-232, Div. A, Title VIII, § 807(d)(6), Aug. 13, 2018, 132 Stat. 1836.

⁸ www.secnnav.navy.mil/donhr/About/Senior-Executives/Biographies/Lopez,%20O.pdf (“Omar R. Lopez
became the sixth civilian Director of the Naval Criminal Investigative Service
(NCIS) in June 2019.”)



the Navy⁹ in cases affecting national security:

SECNAVINST 5430.107A Mission and Function of the Naval Criminal Investigative Service.

1. Purpose. To establish policy and assign authorities and responsibilities for the Naval Criminal Investigative Service (NCIS) and its relationship with other Department of the Navy (DON) activities

POLICY

3.

a. The Director is the DON Senior Official for criminal investigations and intelligence (CI), to include terrorism investigations and related operations pursuant to reference

c. As the DON Senior Official for criminal investigations, the Director will initiate, conduct, and direct independent criminal investigations and associated operations and activities regardless of command authorization.

d. Only the SECNAV may direct NCIS to delay, suspend, or terminate an investigation, other than an investigation being conducted at the request of the DoD Inspector General (IG),

MISSIONS AND FUNCTIONS

1. NCIS is a civilian Federal law enforcement agency that protects and defends the DON against terrorism, foreign intelligence threats, and major criminal offenses; assists commands in maintaining good order and discipline; and provides law enforcement and CI services to the USN and USMC on a global basis. NCIS civilian special agents have investigative responsibility for all crimes punishable under the UCMJ by confinement of more than one year, and significant criminal investigations under the criminal laws of the United States when DON equities are involved.

2. Criminal Investigations and Related Activities

a. NCIS will initiate, conduct, and direct independent criminal investigations and associated operations and activities *regardless of command authorization*. [emphasis added]

Appendix B at 1 (purpose), 6 (policy), 13 (missions and functions). As observed by *Short*,

⁹ 10 USC 8013: Secretary of the Navy (1)(a) ("There is a Secretary of the Navy, appointed from civilian life by the President, by and with the advice and consent of the Senate.")



113 Wn.2d 39, the Navy differentiates the above defined activities of civilian NCIS agents from the more limited PCA compliant use of its military personnel:

SECNAVINST 5820.7C Cooperation with Civilian Law Enforcement Officials.

8. Permissible and Impermissible Forms of Personnel Assistance

a. DoD policy (reference (a), making the Posse Comitatus Act applicable to the DON) reflects the historic tradition of limiting *direct military involvement* in civilian law enforcement activities. ...

Pursuant to reference (a), commands must adhere to this paragraph in deciding on the *provision of military personnel* to civilian law enforcements requests.

b. Restrictions on Direct Assistance: Except as otherwise provided in this instruction, reference (a) prohibits the following forms of direct assistance by military personnel:

- (1) Interdiction of a vehicle, vessel, aircraft, or other similar activity.
- (2) A search or seizure.
- (3) An arrest, apprehension, stop and frisk, or similar activity.
- (4) *Use of military personnel* for surveillance or pursuit of individuals, or as undercover agents, informants, investigators, or interrogators....

Appendix C at 4 (emphasis added). This PCA compliant prohibition on direct assistance by military personnel is likewise reflected in DoDI 3025.21 ("Defense Support of Civilian Law Enforcement Agencies") providing regulations required by 10 U.S.C. § 275 provides the direct assistance restrictions including, "[e]xcept as authorized in ... Enclosures 3 and 4," (f) "Surveillance or pursuit of individuals ...; or acting as undercover agents, informants, investigators, or interrogators ..." are inapplicable to "a civilian employee" not under direct control of a military officer. Appendix D at p. 18-19 (restrictions), 23 (exemptions based on status).

Civilian NCIS agents are differently governed by DoDI 5505.03 ("Initiation of Investigations by Defense Criminal Investigative Organizations"). Appendix E. They



1 “may initiate a criminal or civil investigation or conduct investigative activities when ...
2 first able to identify a DoD [Dept. of Defense] nexus. *Id.* at 3 (1.2 Policy (d)). “

3
4 Defendant builds his claim of PCA application to civilian NCIS agents on a Ninth
5 Circuit ruling notwithstanding unequivocal rejection of that premise by Washington’s
6 Supreme Court. In this regard, his argument reflects a fundamental misunderstanding of
7 the separate but interconnected function of state and federal courts. Defendant asserts
8 “binding Ninth Circuit authority prohibits NCIS agents from acting as undercover
9 investigators in civilian law enforcement operations that lack a military nexus.” Def.Br.
10 at 2. Ninth Circuit decisions are not binding on Washington’s courts. *Matter of Pers.*
11 *Restraint of Benn*, 134 Wn.2d 868, 937, 952 P.2d 116 (1998). “Moreover, the geographical
12 location of the court issuing the opinion is of no moment.” *Feis v. King Cnty. Sheriff’s*
13 *Dep’t*, 165 Wn. App. 525, 547, 267 P.3d 1022 (2011). Washington’s courts “have never
14 held that an opinion from the Ninth Circuit is more or less persuasive than, for example,
15 the Second, Sixth, Seventh, Eighth, or Tenth Circuits.” *Id.* This is wise “given the ...
16 [United States Supreme] Court’s well-known lack of reluctance to overturn Ninth Circuit
17 cases.” *Mission Springs, Inc. v. City of Spokane*, 134 Wn.2d 947, fn. 15, 954 P.2d 250
18 (1998). Washington’s judiciary instead follows the carefully considered jurisprudence of
19 Washington’s courts. *See State v. Lord*, 161 Wn.2d 276, 288, 165 P.3d 1251 (2007).

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21 Washington Supreme Court decisions are binding on all lower courts in the state.
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23 *In re Marriage of Larson & Calhoun*, 178 Wn. App. 133, 143, 313 P.3d 1228 (2013). It
24 has already been decided that civilian NCIS agents are not military service members to
25 which the PCA scheme applies and further that scheme is not violated by initiation of
26 undercover investigations by civilian NCIS agents assuming no greater authority than a



1 private citizen. *Short*, 113 Wn.2d at 39-40. This is fatal to arguments Defendant derives
 2 from *United States v. Dreyer*, 804 F.3d 1266 (9th Cir. 2015). Defendant therefore cannot
 3 establish the predicate fact of action by military personnel to which the PCA scheme
 4 applies much less a violation of the PCA's direct assistance prohibition further explained
 5 below. *See Short*, 113 Wn.2d at 39. His motion should be denied.
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 8 Careful review of *Dreyer* also reveals its reasoning to be less soundly anchored in
 9 the PCA scheme's text and dependent upon outdated authority. The Ninth Circuit relied
 10 on § 375 (now § 275) but unlike the Washington Supreme Court did not analyze that text's
 11 explicit limitation to "use of military personnel" though that provision of the statute has
 12 remained unchanged. *Compare Dreyer*, 804 F.3d at 1272-73 with *Short*, 113 Wn.2d at 39
 13 ("Also, [the NCIS agent] was not a 'member' of the Navy.") (citing 10 U.S.C. § 5001(a)(3)
 14 member of naval service defined). On this bedrock definitional qualification the
 15 Washington Supreme Court, unlike the Ninth Circuit, faithfully interpreted the statute to
 16 avoid rendering a clause, *i.e.*, "*a member of the ... Navy*" meaningless or superfluous in
 17 ascertaining congressional intent from the plain language used by Congress within the
 18 legislative scheme. *See Knight*, 4 Wn.3d at 336 (proper interpretation of federal statutes).
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20 In 2015, *Dreyer* secondarily relied on since updated Naval policy that in 2005
 21 provided for NCIS oversight by a Board of Directors including military officers. 804 F.3d
 22 at 1266 (citing SECNAVINST 5430.107(5)(c)). The Navy responsively amended
 23 SECNAVINST 5430.107 to make clear that body, now a Board of Advisors has no control
 24 over NCIS criminal investigations:
 25

26 NCIS BOARD OF ADVISORS

- 27 1. To assist SECNAV in providing DON corporate governance and in
 28 aligning NCIS resources and requirements across the spectrum of NCIS
 29



mission areas to ensure maximum feasible NCIS support for all DON components, the UNSECNAV will, on a regular basis, convene an NCIS Board of Advisors (BOA) which he or she will chair and which will be further comprised of the DON GC; the VCNO; the ACMC; and the Director. **The BOA has no supervisory or operational authority over NCIS.**

Appendix B at 34 (emphasis added). *Dreyer* next relied on since 2018 repealed 32 C.F.R. § 182,¹⁰ which prohibited DoD personnel from providing specified forms of law enforcement assistance, to include acting as undercover agents, informants, or investigators absent a DoD nexus. 804 F.3d at 1274. DoD internal guidance concerning defense support of civilian law enforcement agencies will continue to be published in DoDI 3025.21.

Like repealed § 182, DoDI 3025.21(c. Restrictions on Direct Assistance) (Effective Feb. 8, 2019) generally states DoD personnel are prohibited from providing the following forms of direct civilian law enforcement assistance: (e) Evidence collection ... (f) Surveillance ... of individuals, ... or acting as undercover agents, informants, investigators, or interrogators.... Appendix D at 18-19 (Restrictions). That section expressly qualifies the prohibition: (1) "Except as authorized in this Instruction (e.g. in Enclosures 3 and 4)" and Enclosure 3, subpart 2 "EXCEPTIONS BASED ON STATUS" provides: "The restrictions in section 1 of this enclosure do not apply to: c. A civilian employee. If the civilian is under direct control of a military officer, assistance will not be provided unless it is permitted by section 3 of this enclosure." Appendix D at 23 (Exceptions based on status) (emphasis added), 24 (Exceptions based on military service).

This section in turn identifies exceptions based on military service by military

¹⁰ Defense Support of Civilian Law Enforcement Agencies 83 FR 14588-012018 WL 1621747 April 5, 2018 ("Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 182 is removed.")



1 personnel, applying by policy PCA restrictions under certain exigencies to include “(2)
2 Civilian law enforcement assets are not available to perform the mission; and temporary
3 assistance is required on an emergency basis to prevent loss of life or wanton destruction
4 of property.” Appendix D at 24 (Exceptions based on military service) (emphasis added).
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7 No similar differentiation or exceptions were cited or addressed by *Dreyer*. 804
8 F.3d. at 1274. They expressly exempt from restriction civilian NCIS agents. Meanwhile
9 the Navy more directly conveys the same directive in SECNAVINST 5820.7C by
10 restricting “(4) *Use of military personnel* for surveillance or pursuit of individuals, or as
11 undercover agents, informants, investigators, or interrogators.” Appendix C at 4. The
12 inapplicability of those restrictions to NCIS agents has been recently acknowledged in
13 federal court. *United States v. Garner*, No 2:21-cv-20102-JTF-2 (Unpub. W.D. Ten., Feb.
14 2, 2023)¹¹ (“NCIS is not governed by [DoDI 3025.21] because NCIS agents are not under
15 the direct control of military officers. Therefore, they are considered to be civilian
16 employees.”). References to relevant regulations in Defendant’s brief appear to be drawn
17 from pre-amendment cases. Review of post-amendment source material proves his claim
18 of PCA applicability to civilian NCIS agents would fail if not already foreclosed by the
19 Washington Supreme Court in *Short*.
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26 **2. COMMUNICATING WITH DEFENDANT IN VOLUNTARY INTERNET**
27 **CHATS AND TURNING THE RECORD OF THEM OVER TO LOCAL**
28 **POLICE AS EVIDENCE OF ATTEMPTED SEXUAL EXPLOITATION**
29 **OF A CHILD IS INDIRECT ACTION PERMISSIBLE UNDER THE PCA**
30 **WHEN IT APPLIES.**

31 There is no substantive PCA violation in an undercover NCIS agent engaging in
32

33 ¹¹ 2023 WL 1466939; GR 14.1(b), (d); Fed. R. Appellate Proc. 32.1 (permitting citation to unpublished
34 federal judicial opinions issued on or after Jan. 1, 2007). Appendix G. Unpublished, federal, and other state
cases are not binding.



1 voluntary online internet chats with a private citizen off post and thereafter sharing that
2 information with local police when evidence of attempted child rape develops since the
3 agent is assuming no greater authority than a private citizen chatting with people online.

4
5 *See Short*, 113 Wn.2d at 39-40. The PCA (18 U.S.C. § 1385) provides for use of the Navy
6 where expressly authorized by an Act of Congress, which is now reflected as recodified
7 Chapter 15—*Military Support for Civilian Law Enforcement Agencies* (§ 271 to § 284).

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10 *See Thompson*, 30 M.J. at 573; *Short*, 113 Wn.2d at 39 (PCA analysis applies to
11 corresponding former 10 U.S.C. § 375 recodified as § 275). As currently written, 10

12
13 **U.S.C. § 275 Restriction on direct participation by military personnel provides:**

14 The Secretary of Defense shall prescribe such regulations as may be
15 necessary to ensure that any activity (including the provision of any
16 equipment or facility or the assignment or detail of any personnel) under
17 this chapter does not include or permit direct participation by a member of
18 the Army, Navy, Air Force, or Marine Corps *in a search, seizure, arrest, or*
19 *other similar activity unless participation in such activity by such member*
is otherwise authorized by law.

20 *Id.* (emphasis added). The last clause categorizing the scope of restricted direct law
21 enforcement activities was significant to the Washington Supreme Court in *Short* which
22 held a civilian NCIS agent did not violate this PCA clarifying statute by initiating an
23 undercover controlled illicit drug buy from a private citizen at an off-post bar frequented
24 by service members then transferring that investigation to local police who arrested the
25 defendant. *Short*, 113 Wn.2d at 37-40. The Court observed the statute's "1988 amendment
26 dropped the 'interdiction' phrase and emphasized overt assertions of power such as search
27 and seizure or arrest." *Id.* at 39 (then codified as 10 U.S.C. § 375). Consistent with the
28 maxim of ejusdem generis, the general term "other similar activity" "should not be given
29 its broadest possible meaning but instead should extend only to matters of the same
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1 general class or nature as the terms specifically enumerated[.]”¹² i.e., “search, seizure,
2 arrest[.]” From those core acts of direct police authority the Court distinguished “military
3 personnel acting in the same way as a civilian from those exerting military authority under
4 the posse comitatus act.” *Id.* at 39 (citing *Airway Heights*, 45 Wn. App. at 92). The Court
5 determined there was no PCA violation in a civilian undercover agent of NCIS purchasing
6 alleged cocaine from a private citizen off post because the agent did not assume authority
7 greater than a private citizen making the purchase. *Id.* at 40.

11 *Short* forecloses Defendant’s claim the more indirect activity of engaging in
12 voluntary communication with him over the internet would violate the PCA if it applied
13 to civilian NCIS agents, which it does not. Defendant again erroneously draws support
14 from *Dreyer* instead of binding precedent from Washington’s appellate court. Aside from
15 being authoritative, Washington’s precedent on this point is again more firmly anchored
16 in the PCA scheme’s purpose than the outdated Ninth Circuit cases.

20 The Washington Supreme Court rejection of the PCA claim in *Short* adopted the
21 Court of Appeals’ military authority based analysis of conduct in *Airway Heights*. *Short*,
22 113 Wn.2d at 39 (citing *Airway Heights*, 45 Wn. App. at 92). There the Court of Appeals
23 rejected a PCA claim challenging local police’s use of an Airforce Breathalyzer and
24 Airman technician as part of a DUI investigation. 45 Wn. App. at 87-89. To determine
25 what military involvement is forbidden by the PCA, the Court of Appeals looked to the
26 historical underpinnings of an act passed by Congress to limit the “allegedly excessive
27 use of federal troops to preserve order and maintain the governments of Republican
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33 ¹² Rules of interpretation, 25 Wash. Prac., Contract Law And Practice § 5:3 (3d ed.) (citing *State v. Hampton*,
34 35 Wn. App. 2d 150, 165, 574 P.3d 150 (2025) et al.



1 carpetbaggers in the southern states.” *Id.* at 89-90. “While protecting civilians from being
2 subject to the exercise of regulatory or proscriptive military authority, the act was also
3 aimed to protect the military from overuse by local civil law enforcement authorities.” *Id.*
4 at 90. From that background the Court determined “*military involvement does not violate*
5 *the Posse Comitatus Act unless it actually regulates, forbids, or compels some conduct on*
6 *the part of those claiming relief.*” *Id.* (emphasis added).
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10 The Court derived this standard from United States Supreme Court guided Eighth
11 Circuit precedent that framed the proper inquiry in determining a PCA violation to be
12 whether military personnel were used “in such a manner that the military personnel
13 subjected citizens to the exercise of military power which was regulatory, proscriptive, or
14 compulsory in nature either presently or prospectively.” *Id.* (quoting *United States v.*
15 *Casper*, 541 F.2d 1275, 1278 (8th Cir. 1976)). The test was based on language from *Laird*
16 where the United States Supreme Court rejected the claim existence of an Army data
17 gathering system providing surveillance of lawful civilian activity infringed upon First
18 Amendment rights. *Id.* (citing *Laird v. Tatum*, 408 U.S. 1, 11 (1972)). The Washington
19 Court of Appeals accordingly determined “[m]erely furnishing military personnel,
20 cameras, and planes to fly surveillance and providing advice to those dealing with the
21 disorder does not connote the active participation proscribed by the act.” *Id.* (“military
22 personnel must assume greater authority than that permitted to civilians”) (citing *Lee v.*
23 *State*, 513 P.2d 125 (Okla. Crim. App. 1973) and *Sanders v. North Carolina*, 454 U.S.
24 973 (1981) (surrender to civilian authorities evidence discovered in routine military
25 investigation constitutes only non-violative passive involvement)). “Based upon the
26 language, history and apparent purposes of the Posse Comitatus Act, which is to have
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1 local authorities handle local matters, preclude use of the federal militia, particularly in
2 policing state elections, and to prevent civilian control through military power, [the Court
3 of Appeals] f[ou]nd no violation of the act.” *Id.* at 92.

5 *Dreyer* differently found a PCA violation through application of a far less textually
6 moored test of whether civilian NCIS agents represent and further the Navy’s interests
7 and are purportedly indistinguishable from military agents to private citizens despite
8 constructive notice attending the publicly available statutory and regulatory authority that
9 *Dreyer* cited. 804 F.3d at 1274 (citing *United States v. Chon*, 210 F.3d 990, 993 (9th Cir.
10 2000)). That test was carried over from about a paragraph of conclusory treatment much
11 different than the Court of Appeals’ careful examination of the PCA in *Airway Heights*.
12 *Dreyer* is also factually distinguishable from Defendant’s case in terms of investigative
13 authority NCIS brought to bear. For there, after using a software application that monitors
14 the internet for online distribution of child pornography, NCIS secured an administrative
15 subpoena for *Dreyer*’s name and IP address. 804 F.3d at 1270-71, 1276. Whereas in this
16 case NCIS merely engaged in voluntary online communication with Defendant and left it
17 to local police discretion whether to investigate Defendant for violations of Washington
18 law through invocation of Washington’s legal process.

25 Where applicable, no PCA violation can be grounded in use of military internet
26 connections or computers for engaging in voluntary correspondence and turning the
27 resulting information over to local police. For the Washington Supreme Court further
28 observed “use of equipment, personnel, and information is generally not considered direct
29 participation” under the PCA statutory scheme. *Short*, 113 Wn.2d at 39. “Consistent with
30 this congressional scheme aimed at increasing military cooperation with civilian law
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enforcement, § 275 sits among several cooperating facilitating sections, to include:

10 U.S.C.A. § 271 Use of information collected during military operations

(a) *The Secretary of Defense may, in accordance with other applicable law, provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military training or operations that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials.*

(b) *The needs of civilian law enforcement officials for information shall, to the maximum extent practicable, be taken into account in the planning and execution of military training or operations.*

(c) *The Secretary of Defense shall ensure, to the extent consistent with national security, that intelligence information held by the Department of Defense and relevant to drug interdiction or other civilian law enforcement matters is provided promptly to appropriate civilian law enforcement officials.* [emphasis added]

10 U.S.C.A. § 272 Use of military equipment and facilities

The Secretary of Defense may, in accordance with other applicable law, make available any equipment (including associated supplies or spare parts), base facility, or research facility of the Department of Defense to any Federal, State, or local civilian law enforcement official for law enforcement purposes.

Defendant lastly claims there is a PCA violation in what he alleges as a lack of a DoD nexus between his effort to sexually exploit children and NCIS's proactive undercover effort to protect children from that harm. Aside from the PCA's inapplicability to the investigations of civilian NCIS agents, Defendant's argument proceeds from DoD policy. But neither violation of a civilian NCIS agent's 10 U.S.C. § 8750 civilian law enforcement authority nor the corresponding DoDI 5505.03 or 5505.21 DoD nexus requirements for its exercise are violations of the inapplicable PCA.

Defendant also incorrectly contends there is no DoD nexus underlying the NCIS investigation that resulted in Defendant being reported to local police after he tried to lure



1 a minor-Navy dependent for sexual exploitation. Examples of DoD nexus include a
 2 reasonable likelihood of one of the following: ... (3) A ... *dependent* was the victim of
 3 the crime when the offense falls within the ... investigative jurisdiction... (6) ... (b) When
 4 there is a need to investigate crimes committed against a ... *dependent*” Appendix D.
 5 (DoDI 5505.03) at 4 (emphasis added); *accord United States v. Benavides*, SA-19-CR-
 6 152-XR (Unpub. W.D. Texas, 2020) (internet chat operation secondarily implemented for
 7 the purpose of ensuring the safety of military dependents).¹³

11 “In cases where a DoD nexus cannot immediately be identified, DCIO
 12 investigative activities will be limited to steps intended to develop sufficient information
 13 to assess whether a nexus exists. Appendix E (DoDI 5505.03) at 4 (emphasis added).
 14 When a DoD nexus cannot be identified, ... agents must discontinue investigative
 15 activities and refer allegations to the appropriate civilian law enforcement agency.” *Id.* at
 16 6 (3.1 (c)). Civilian NCIS agents are further directed by DoDI 5505.21 to conduct
 17 proactive operations against sexual exploitation of children. Appendix F. They are
 18 directed to “refer allegations of [child sexual exploitation] they receive to the appropriate
 19 ... local law enforcement agency when the reported offenses are not within [military
 20 criminal investigative organization’s] investigative jurisdiction[,]” *i.e.*, no DoD nexus. *Id.*
 21 at 3 (1.2 Policy (c)).

27 Here, NCIS was engaging in proactive operations to combat or prevent child
 28 sexual exploitation, as they are permitted to do when there is a known DoD nexus. DoDI
 29 5505.21. This proactive investigation launched by NCIS contained the DOD nexus of
 30 protecting military dependents, as recognized in DoDI 5505.03 and *United States v.*

33 ¹³ 2020 WL 5984062 GR 14.1(b), (d); Fed. R. Appellate Proc. 32.1. Appendix H.
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1 *Benevides*. SA Main's undercover persona was a dependent of a US Navy Sailor.
2 Defendant was first made aware of the dependent status of the 11 year old early in chats,
3 when SA Main told him that her mother was a Sailor for the U.S. Navy. It is evident from
4 the chats that the defendant knew the 11 year old he believed he was talking to was tied
5 to the military from when he inquires how the 11 year old is doing considering the
6 government shutdown. (III. Relevant Background, *supra*). SA Main references her
7 undercover persona's ties to the military when she mentions to the defendant that her
8 mother's schedule was changing because of President Trump.
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10 The defendant was not identified until November 24, 2025, when BPD began
11 working on the case. Appendix A at 7. Chats before then involved the defendant targeting
12 the 11 year old military dependent he believed was on the other end of the chats. The chats
13 also involved SA Main's attempt to gather identifying information on the Defendant. The
14 defendant was identified by BPD. *Id.*
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16 At that point, SA Main had been chatting with the defendant for nearly 3 months.
17 SA Main remained as the chatter, as changing a chatter in the middle of the ruse could be
18 detrimental. SA Main remained as the chatter while working with BPD until they were
19 able to set up a meeting where the defendant would be arrested. A change in the person
20 behind the undercover persona three months into chatting could prove fatal in the
21 investigation. Changes in tone and diction between the two people trying to portray the
22 same 11 year old child could lead to the defendant discovering the ruse, and moving on to
23 preying on a child who is not an adult undercover. It was pertinent at that point in the
24 investigation that SA Main continue chatting with the Defendant until the chats could be
25 completed, which in this case occurred when Defendant was arrested after attempting to
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1 meet with SA Main's undercover persona so he could rape her.

2 No PCA violation has occurred here. NCIS is a civilian law enforcement agency,
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4 who merely chatted with the defendant and did not exert any military authority during
5 their involvement with this case. The actions of SA Main in this case fall square in
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7 compliance with regulations set forth by the DoD, and the PCA. Defendant's motion
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9 should be denied.

10 **B. DEFENDANT HAS LIKEWISE MISIDENTIFIED SUPPRESSION AS**
11 **RELIEF AVAILABLE FOR ALLEGED PCA VIOLATIONS WHEN IT**
12 **EXCEEDS THE LIMITED REMEDIES OF FINE AND IMPRISONMENT**
13 **EXPRESSLY SELECTED BY CONGRESS, THE INTENT OF WHICH IN**
14 **THIS REGARD HAS BEEN PROPERLY HONORED BY COURTS IN**
15 **WASHINGTON AND BEYOND.**

16 Defendant incorrectly frames suppression as an adopted remedy for violations of
17 the PCA scheme to be applied by trial courts if either an unauthorized assertion of military
18 authority is established or trial courts perceive a need to deter future violations. Instead,
19 the Washington Supreme Court recognized "the statute itself identifies the potential
20 consequences of a [PCA] violation: a fine or imprisonment or both." *State v. Valdobinos*,
21 122 Wn.2d 270, 277, 858 P.2d 199 (1993). "The Legislature thus manifestly contemplated
22 the question of remedies and provided those intended." *Id.* That is one reason why
23 attempts by criminal defendants to use violations of the act as a ground to exclude
24 evidence have been generally unavailing." *Id.*; see also *United States v. Vick*, 842
25 F.Supp.2d 891, 894 (E.D. Va 2012) ("the exclusionary rule is unwarranted. ... the exclusive
26 remedies are a fine ... imprisonment ... or both, not suppression.... In fact, not a single
27 federal court thus far has extended the exclusionary rule to ... PCA Violations.") (*citing*
28 *see e.g., United States v. Al-Talib*, 55 F.3d 923, 930 (4th Cir. 1995)). The Court conveyed
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1 it was "reluctant to resort to the exclusionary remedy for violations of the posse comitatus
2 act." *Id.* Without adopting the remedy, the Court noted it would not be considered absent
3 an unauthorized assertion of military authority or a need for exclusion as a deterrent to
4 future violations. *Id.* The Court cited to *Short*, which cited to *Taylor* where the Oklahoma
5 Criminal Court of Appeals held: "We find that violations of the Posse Comitatus Act do
6 not warrant invocation of an exclusionary rule." *Taylor v. State*, 645 P.2d 522, 524 (Okla.
7 Crim. App. 1982). *Talyor* reasoned "The statute itself provides criminal sanctions for any
8 violations of the Act. Secondly, the potential abuses of the Act obviously are not of the
9 same magnitude, neither qualitatively nor quantitatively, as violations under the Fourth
10 Amendment. Finally, the Act expresses a policy that is for the benefit of the people as a
11 whole, but not one that may be characterized as expressly designed to protect the personal
12 rights of defendants." *Id.* *Taylor* left open the possibility of excluding evidence where
13 "illegal conduct by law enforcement personnel rises to an intolerable level as to necessitate
14 an exclusion of the evidence resulting from the tainted arrest." *Id.* Both the Washington
15 Supreme Court and Oklahoma Criminal Court of Appeals looked to the Fourth Circuit in
16 this regard, which later concluded: "Where ... the military operation at issue involved no
17 seizure of evidence, the exclusionary rule is clearly unavailable." *United States v. Al-*
18 *Talib*, 55 F.3d 923, 930 (4th Cir. 1995) citing *Hayes v. Hawes*, 921 F.2d 100, 103 (7th
19 Cir.1990) (no suppression where military assistance did not involve search and seizure).

20 The Washington Supreme Court's reluctance to adopt suppression is consistent
21 with it "declin[ing] to go beyond the plain language of the act." *Short*, 113 Wn.2d at 38.
22 This appropriate exercise of judicial restraint corresponds with recognition that courts
23 "cannot use interpretation to add language that the legislature did not use." *Pendleton*



1 *Place, LLC v. Asentista*, 29 Wn.App.2d 516, 522-23, 541 P.3d 397 (2024) (*abrogated on*
 2 *other grounds by Knight*). Nor will courts “rewrite plain statutory language under the guise
 3 of construction.” *Id.* Washingtons courts accordingly “decline to add language that
 4 Congress did not include.” *Id.* at 524; *State v. Delgado*, 148 Wn.2d 723, 730, 63 P.3d 792
 5 (2003) (courts “cannot add ... clauses to an unambiguous statute....”); whereas the
 6 interpretation of agencies charged with administering a federal statute are generally
 7 entitled to deference when they align with a statute’s plain language. *Knight*, 4 Wn.3d at
 8 336. The *Dreyer* majority differently conveyed less preoccupation with such restraint in
 9 expanding the PCA’s application and penalties beyond unambiguous congressional intent.
 10 That is inconsistent with Washington’s approach. *State v. Jackson*, 137 Wn.2d 712, 725,
 11 976 P.2d 1229 (1999) (courts should resist temptations to rewrite unambiguous statutes to
 12 suit their notions of good policy).

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 14 Concurring members of *Dreyer* felt different. 804 F.3d at 1283-85 (OWENS,
 15 Circuit Judge, joined by SILVERMAN and CALLAHAN, Circuit Judges, concurring).
 16 They believed “absent express congressional authorization, suppression is not a remedy
 17 for PCA violations.” *Id.* They recalled exclusion of evidence to remedy a statutory
 18 violation is extremely rare. *Id.* In the few cases in which the United States Supreme Court
 19 has suppressed evidence for statutory violations the excluded evidence arose directly out
 20 of statutory violations that implicated important Fourth and Fifth Amendment interests.
 21 *Id.* (citing *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 347–48 (2006)). “Those cases are
 22 easily distinguishable from the PCA.” *Id.* The Supreme Court has long since rejected the
 23 broader application of suppression that its earlier decisions suggested and imposed a more
 24 rigorous weighing of its costs and deterrence benefits. *Id.* The PCA cannot be fairly



1 characterized as expressly designed to protect the personal rights of criminal defendants.
 2 Any right is “at best remotely connected to the gathering of evidence, so “[a]n individual
 3 defendant like Dreyer has no interest in what uniform the official who monitors his public
 4 exchange of child pornography is wearing.” *Id.* at 1285.
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 7 There is likewise nothing to deter in civilian NCIS agents continuing internet chats
 8 with child predators who voluntarily correspond with them hoping to sexually exploit
 9 minor-Navy dependents. Voluntary internet chats no different than exchanged by private
 10 citizens involve no coercive police action—no searches of people or places, no seizure of
 11 evidence, and no liberty infringing arrests. Child predators are completely free not chat
 12 with civilian NCIS agents posing as Navy-connected children. But when child predators
 13 like Defendant decide to target Navy-connected children for sexual exploitation, there is
 14 no recognized privacy interest in that conduct to be vindicated through suppression. *See*
 15 *Matter of Hopper*, 4 Wn. App.2d 838, 849, 424 P.3d 228 (2018); *State v. Price*, 33 Wn.
 16 App. 2d 1043 (Unpub 2025) (2025 WL 40839); *State v. Bowman*, 198 Wn.2d 609, 613,
 17 498 P.3d 478 (2021); *State v. Peppin*, 186 Wn. App. 901, 910, 347 P.3d 906 (2015).
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 21 Adding a suppression remedy beyond congressional intent in this context would
 22 only benefit child predators when Washington’s “interest in the protection of children is
 23 unquestionably of the utmost importance.” *State v. Motherwell*, 144 Wn.2d 353, 365-66,
 24 788 P.2d 1066 (1990). The extra-statutory remedy Defendant demands to protect child
 25 predators like him from NCIS detection is antithetical to Washington’s prioritization of
 26 protecting children even when in direct conflict with constitutionally protected parental
 27 rights. RCW 26.44.010 (“When a child’s physical or mental health is jeopardized, or the
 28 safety of the child conflicts with the legal rights of a parent ... the health and safety
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interests of the child should prevail.”). “Because the State cannot combat the evils of child abuse without some means of bringing [it] to light, [the Washington Supreme Court] conclude[d] the mandatory reporting requirement of ... RCW 26.44.030(1) is justified by a compelling State interest....” *Motherwell*, 144 Wn.2d at 365-66. In that context any restriction on the scope of reporting duties beyond that determined by the Legislature constitutes an undue interference when the goal is as important as the protection of children from physical and sexual abuse since the class of people the statute is designed to protect is victims, not their abusers. *Id.*; *Beggs v. State, Dept. of Social & Health Services*, 171 Wn.2d 69, 77, 247 P.3d 421 (2011).

The extra-statutory suppression Defendant advocates for to deter civilian NCIS from again intercepting would be child rapists targeting children in Washington through voluntary correspondence passed along to local police works against that paramount objective by protecting abusers instead of child victims. It would have the absurd effect of making civilian NCIS an aberrant class of people who alone cannot freely communicate with private citizens online and share any revealed plans to sexually exploit children with local police. For example, local police could lawfully investigate through search warrants reliable tips of attempted child sex abuse provided by known criminals who chatted with the predator but could not if the same information was received from a civilian NCIS agent when such a restriction can be nowhere identified as congressional intent. *See* RCW 10.79.020; *State v. Chenoweth*, 160 Wn.2d 454, 482-83, 158 P.3d 595 (2007). But courts “presume the legislature does not intend absurd results and, where possible, interpret ambiguous language to avoid such absurdity.” *State v. Skrobo*, 17 Wn. App. 2d 197, 201, 485 P.3d 333 (2021).



1 There is likewise no flagrant disregard by NCIS of PCA precedent to deter as
2 Defendant claims. In 2015, some federal judges on a divided court concluded the PCA
3 applied to civilian NCIS agents based on a since amended regulatory structure. *Dreyer*,
4 804 F.3d at 1274, 1283-86. The majority of that court interpreted the PCA's scope and
5 ease of adding to its remedies differently than the Washington Supreme Court,
6 Washington Court of Appeals, and the other state and federal courts they looked to for
7 guidance. *Short*, 113 Wn.2d at 38-40; *Valdobinos*, 122 Wn.2d 276-81; *Airway Heights*,
8 45 Wn. App. at 89-92. More recently, federal courts from different circuits analyzing
9 NCIS's activities under the more recently adopted statutes and regulations have
10 respectively held the PCA does not govern the conduct of NCIS agents (*Garner supra*)
11 and there is a DoD nexus in ruse chat operations aimed at protecting military dependents
12 from sexual exploitation (*Benavides supra*). If judges thus disagree on these legal issues,
13 it is unfair to subject police to sanctions and through them put children at risk. *See Pearson*
14 *v. Callahan*, 55 U.S. 223, 245 (2009) ("if judges thus disagree on a constitutional question,
15 it is unfair to subject police to money damages for picking the losing side of the
16 controversy"); *Barts v. Joyner*, 865 F.2d 1187, 1193 (11th Cir. 1989) ("We cannot
17 realistically expect that reasonable police officers know more than reasonable judges
18 about the law.").

19 This is yet another reason why Defendant's invocation of *Dreyer* to achieve
20 suppression should fail. For "[a]lthough the federal district courts in the Ninth Circuit may
21 be bound to follow Ninth Circuit precedent pursuant to the doctrine of stare decisis,
22 [Washington's] court[s] [are] not obliged to follow Ninth Circuit precedent, *much less are*
23 *law enforcement officials expected to appreciate the nuances of our judicial hierarchy.*"



1 *Feis v. King Cnty. Sheriff's Dep't*, 165 Wn. App. 525, 547, 267 P.3d 1022 (2011)
 2 (emphasis added). Stated otherwise, there is nothing to deter for there is no clear judicial
 3 consensus NCIS did anything wrong, with a majority of courts aligning in support of its
 4 interpretation of its own enabling statutes and regulations. And most importantly for this
 5 Court's analysis NCIS's conduct in this case was proper under binding authority from
 6 Washington's courts.

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 8 This does not mean NCIS's law enforcement authority can be exceeded with impunity.
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 10 For federal courts can be invoked "to keep agents of the Federal Government within the
 11 bounds of their lawful powers." *Randolph v. Willis*, 220 F. Supp. 355, 359 (S.D. Cal.
 12 1963); accord *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403
 13 U.S. 388, 389 (1971) (unconstitutional conduct of federal agent acting under color of
 14 authority gives rise to cause of action). Where PCA violations actually occur, those
 15 offending military personnel will be subject to fines and imprisonment. Defendant's
 16 motion to suppress and dismiss should be denied.

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 21 **C. DEFENDANT INCORRECTLY FRAMES ALL EVIDENCE IN THIS**
 22 **CASE AS THE FRUIT OF NCIS'S TRANSFER OF HIS VOLUNTARILY**
 23 **SHARED ATTEMPT TO RAPE A CHILD BECAUSE HIS COMPLETED**
 24 **COMMERCIAL SEX ABUSE OF A MINOR CAN BE PROVED**
 25 **THROUGH THE INDEPENDENT SOURCE OF HIS THEN CHILD**
 26 **VICTIM.**

27 Defendant's request for suppression of all evidence in this case as fruit of NCIS's
 28 involvement mistakenly ignores the victims identified in this case, of whom have separate
 29 charged counts and would be both independent and attenuated from the involvement of
 30 NCIS. "Not all evidence 'is fruit of the poisonous tree simply because it would not have
 31 come to light but for the illegal actions of the police.'" *State v. Parker*, 35 Wn. App. 2d
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1 170, 573 P.3d 473 (2025), review denied, 5 Wn.3d 1027, 581 P.3d 626 (2026) quoting
2 *Wong Sun v. United States*, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963). “The
3 proffer of a living witness is not to be mechanically equated with the proffer of inanimate
4 evidentiary objects illegally seized. The fact that the name of a potential witness is
5 disclosed to police is of no evidentiary significance, per se, since the living witness is an
6 individual human personality whose attributes of will, perception, memory and volition
7 interact to determine what testimony he will give. The uniqueness of this human process
8 distinguishes the evidentiary character of a witness from the relative immutability of
9 inanimate evidence.” *U. S. v. Ceccolini*, 435 U.S. 268, 277, 98 S. Ct. 1054, 55 L. Ed. 2d
10 268 (1978). Several exceptions apply to exclusion of evidence, including the independent
11 source doctrine and the attenuation doctrine.

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13 “Under the independent source doctrine, an unlawful search does not result in the
14 suppression of evidence ultimately obtained using ‘a valid source or other lawful means
15 independent of the unlawful action.’” *State v. Smith*, 177 Wn.2d 533, 539-540, 303 P.3d
16 1047 (2013) quoting *State v. Gaines*, 154 Wash.2d 711, 718, 116 P.3d 993 (2005). To
17 satisfy the independent source doctrine, the lawfully gained information must be
18 genuinely independent of the illegal search. *Id.*

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20 In *State v. Smith*, officers conducted a random search of a motel registry, where they
21 discovered a subject with an outstanding warrant was staying at the motel. Officers went
22 to that room and arrested Smith. 177 Wn. 2d at 537. Inside the motel room, officers located
23 two victims of Smith’s crimes. *Id.* Officers entered the hotel room as community
24 caretakers after seeing the condition of these victims, who later cooperated with the
25 investigation and prosecution. *Id.* The practice of random searches of motel registries was
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1 subsequently invalidated, and Smith argued that the identity of the victims was a fruit of
2 the now illegal random motel registry search. *Id.* The Washington Supreme Court held *en*
3 *banc* that the victim's testimony was properly admitted, noting that while the two victims'
4 testimony could be characterized as "fruit of the search", the officers had an independent
5 source for their entry into the hotel room. *Id.* at 544. The court indicated that extra caution
6 should be taken when considering suppression of a victim, noting "it was reasonable to
7 assume that as victims of Smith's acts, these witnesses would be willing to testify", and
8 "[t]here is a constitutional dimension to the right of crime victims to participate in criminal
9 proceedings". *Id.* at 544-545; See Wash. Const. art. I, § 35.

14 The evidence provided by victims of Defendant's crimes subsequent to NCIS's
15 involvement should not be suppressed because the independent free will of those
16 cooperating victims is an intervening cause that severs any causal connection with NCIS's
17 involvement. When an intervening circumstance gives rise to a superseding cause that
18 genuinely severed the causal connection between official misconduct and the discovery
19 of evidence, that evidence is attenuated from the misconduct and survives exclusion.
20 *Parker*, 35 Wn.App.2d at 175. An independent act of free will by someone other than law
21 enforcement is such a superseding cause that breaks this causal chain. *Id.*

26 "To hold that all [evidence] resulting from [misconduct] are inadmissible forever ...
27 would not merely permit the criminal 'to go free because the constable has blundered' but
28 would ... in effect be giving [the defendant] a crime insurance policy." *Id.* at 185.

30 Case law has recognized this, and distinguished evidence gained from a voluntary
31 disclosure by a witness, that is remote in impetus from police misconduct. In *Wong Sun*
32 *v. United States*, the United States Supreme Court held Wong Sun's confession was
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1 properly admitted after Wong Sun was illegally arrested when Wong Sun was
2 subsequently released on his personal recognizance and returned voluntarily several days
3 later to confess. 371 U.S. at 491. Washington case law makes the same distinction. In
4 *Parker*, law enforcement used an unlawful cell site simulator to locate Parker, which led
5 to the identification of a witness who later made statements to the police that were used
6 against Parker. The court determined the witness's cooperation with the police was an
7 independent act of free will, beyond the foreseeable results of the cell site simulator, thus
8 a superseding cause of the discovery of her testimony. *Parker*, 35 Wn.App.2d at 173.
9 Additionally, in *State v. Childress*, one victim was identified through a photo located on
10 the defendant during an unlawful search. The court held that the victim's later voluntary
11 disclosure was permissible evidence, attenuated from the unlawful search of the
12 defendant. 35 Wn. App. 314, 666 P.2d 941 (1983).

18 This case is no different. Through search warrants obtained for Defendant's devices
19 and social media accounts, BPD identified additional victims of the Defendant's actions.
20 Appendix A at 19-20. Notably, this includes R.S. who voluntarily spoke with law
21 enforcement and disclosed her conversations with the defendant. *Id.* at 19. R.S. disclosed
22 that the defendant asked her to send "dirty" images and videos of herself, which she did
23 by sending him a topless photo of herself, and a video of her masturbating. *Id.* The
24 defendant offered her gifts and money, and asked her to recruit other young girls for the
25 defendant's sexual exploitation. *Id.* R.S. also disclosed that the two of them had sex. *Id.*
26 R.S. was 16 years old at the time. *Id.* Other victims were also identified who the defendant
27 messaged with the intent to "have some fun", but these victims were not lured in by the
28 defendant's predatory attempts. *Id.*



1 “[I]t is reasonable to assume that as victims of [Wade’s] acts, these witnesses would
2 be willing to testify”. *Smith*, 177 Wn.2d at 545. As victims, they have a constitution right
3 to be involved in criminal proceedings. *Id.* The victim’s testimony should not be
4 suppressed. Suppression of a victim of the defendant’s actions who is independently and
5 voluntarily speaking against him would not only let a child predator go free based on a
6 meritless claim the constable blundered, but would in effect give the defendant a crime
7 insurance policy. This would only benefit child predators when Washington’s “interest
8 in the protection of children is unquestionably of the utmost importance.” *Motherwell*,
9 144 Wn.2d at 365-66.
10

11 The victim’s cooperation with law enforcement is attenuated from any involvement
12 NCIS had with this case. NCIS was no longer involved with this case at the time these
13 victims were involved. The identity of these victims would not have been foreseeable from
14 NCIS’s involvement of chatting with the defendant. The victim’s independent exercise of
15 free will to speak with law enforcement and disclose what happened with the defendant is
16 an intervening circumstance, just as seen in *Parker*, *Wong Sun*, and *Childress*. The
17 victim’s identification and cooperation with law enforcement is attenuated from NCIS’s
18 involvement in the case and should not be suppressed.
19

20 Should this court reach the issue of suppression, suppression of the independent
21 accounts of victims of the defendant’s actions should not occur, because such victim’s
22 accounts are attenuated from any NCIS involvement in the case, and those victims have a
23 constitutional right to be involved in the criminal proceedings. Defendant’s motion to
24 dismiss should be denied.
25



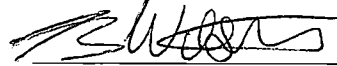
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V. CONCLUSION

A civilian special agent of NCIS cannot violate the PCA by continuing voluntary internet chats with a profile identified as a minor-Navy dependent and turning evidence of the voluntary participant's attempt to have sex with that minor over to BPD, particularly when no search, seizure or similar exercise of authority was asserted by the special agent. The statutory remedy for a PCA violation is not suppression, and no binding authority has applied the extra-statutory remedy of suppression to a PCA violation. Evidence that came to light through independent free will of victims of defendant's crimes is independent and attenuated from any NCIS involvement in this case and should not be suppressed. Accordingly, this court should deny Defendant's motion to suppress and dismiss under the PCA.

RESPECTFULLY SUBMITTED
August 10, 2026

STATE OF WASHINGTON



BREANNA WILSON, WSBA No. 61182
Deputy Prosecuting Attorney



APPENDIX A

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Chad M. Enright, Prosecuting Attorney
Special Assault Unit
614 Division Street, MS-35
Port Orchard, WA 98366
(360) 337-7148; Fax (360) 337-4949
kitsap.gov/pros

INCIDENT REPORT	BREMERTON POLICE DEPARTMENT	CASE NUMBER B25006295	SUP NO 3
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OFFENSES

ENTRY NO 2	VIOLATION/STATUTE 9A.44.073		OFFENSE DESCRIPTION RAPE OF A CHILD I			
ATTEMPTED Y	LEVEL FA	COUNTS	NCIC CODE 1199	DISPOSITION	DISPOSITION DATE	
AGENCY CLASSIFICATION SEX ASSAULT-OTHER			LOCATION OF OFFENSE			
COURT						
COMMENT						

SUSPECTS

ENTRY NO 1	INVOLVEMENT SU		NAME: LAST, FIRST, MIDDLE WADE, HOUSTON CURRY								
HOME ADDRESS 13355 N MADDISON AVE NE BAINBRIDGE ISLAND WA 981			MAILING ADDRESS								
EMPLOYER BRUCIATO		EMPLOYER ADDRESS			OCCUPATION						
HOME PHONE (206) 842-1420			CELL PHONE		OTHER PHONE	EMPLOYER PHONE					
DOB 05/22/1981	AGE 44	SEX M	RACE W	JUV N	ETH N	HEIGHT 604	WEIGHT 210	HAIR BRO	EYES BLU	POB WA	RESIDENCY R
DL NUMBER	DL ST	SSN	FBI ID	STATE ID							
COMMENT											

NARRATIVE

CERTIFICATE OF PROBABLE CAUSE

AGENCY: Bremerton Police Department

REPORT NUMBER: B25006295

CLERK CODE:

SUSPECT'S NAME: Houston Curry Wade

BIRTH DATE: 05/22/1981

COURT: Kitsap Superior Court

TITLE OF CRIMES ARRESTED FOR AND RCW'S:

RCW 9.68A.090 - Communication with minor for immoral purposes

RCW 9A.44.073 - Rape of a child in the first degree

Received/Kitsap County Prosecutors

INCIDENT REPORT	BREMERTON POLICE DEPARTMENT	CASE NUMBER B25006295	SUP NO 3
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ARREST DATE: 12/17/2025

ARREST TIME: 1745 hours

LOCATION OF CRIME: Homer Jones Road, & Schley Blvd, Bremerton, WA 98310

PROBABLE CAUSE:

On 11/3/2025, I received an e-mail from Special Agent (SA) Kesley Main with the Naval Criminal Investigative Services (NCIS). Before this e-mail, SA Main and I had discussed undercover (UC) chatting because she had completed the ICAC-certified UC chat class. I learned from the email that SA Main had been chatting with an individual who had expressed interest in meeting with SA Main's UC persona. I later learned that her persona was that of an eleven-year-old girl in sixth grade.

The suspect, later identified as Houston Wade (DOB 05/22/1981), sent the UC account a picture of himself.

The initial chat began on August 29, 2025, in a phone application called "Hush". Wade's screen name was "AuthorityFigure" with the post "The best part about teaching is the students." SA Main responded to the post by saying, "Hi." Wade asked if the UC was a good student. The UC told him she was in sixth grade and eleven years old, but wasn't sure she was the kind of person he wanted to talk to. Wade told her that was exactly who he wanted to talk to. Wade asked if she wanted to move the chat to another application; the UC picked Kik. That same day, they began communicating on Kik. Wade provided the username "pulse_of_life_". The display name for the account was "The Captain".

The UC and Wade chatted regularly over the course of approximately 110 days. Initial signs of grooming began on September 18, 2025. Wade said he was imagining how cute she would look curled up with a book. The UC sent an edited image of herself to make her appear to be an 11-year-old. Wade told her she was "definitely a looker," noting that he was a fan of her pigtails. He added, "Well, this significantly older man is telling you that you are beautiful". On October 12, 2025, when discussing hobbies, Wade made some suggestions, including "insert really filthy pervy hobbie idea here" among a list of more conventional hobbies. He added, "Really hoping you choose the pervy hobbie (cross fingers emoji)". Later that night, he inquired if there was a day the UC would be available to "hang out".

Wade continued his grooming by attempting to solicit intimate images from someone he believed was an 11-year-old girl. On October 13, 2025, Wade asked if the UC had ever sent a "sexy" pic to someone. On October 15, 2025, Wade brought the topic back up saying, "Well, I'll be the little devil on your shoulder:

INCIDENT REPORT	BREMERTON POLICE DEPARTMENT	CASE NUMBER B25006295	SUP NO 3
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give in to it (devil emoji)". He proposed she take pictures of herself that she thought were sexy, but she didn't have to send them, but would still have them. The UC replied that they thought they could do that. Wade added, "Be as lewd as you want. You don't have to choose to send me anything if you don't want to." The UC thanks Wade for not pressuring her. Wade told her it isn't fun to be pressured and that they would take things at a pace she was comfortable with.

Wade began actively attempting to meet the girl he believed to be 11 years old to engage in various sex acts. On November 2, 2025, Wade asked when they were going to "hang out" adding he was excited to spend time with her. The UC asked what he wanted to do, Wade said they could go on a "date of sorts" starting with a meal and doing "some hanging out after". When the UC said that could be fun and asked if there was anything else, Wade replied that the "hanging out" was about doing "a lot of naughty things" with the UC. Wade suggested they could do some experimenting to see what the UC liked. The UC requested further clarification, so she wasn't surprised. Wade replied, "We'll go as far as you want. Making out and heavy petting for sure. There's no need to do anything more than what you feel comfortable with. If you want to experience your first orgasm or more, you'll let me know. If you don't, then you'll tell me." He explained that he was experienced and always ready for more, but acknowledged that her lack of experience might make her apprehensive. The UC told Wade that she trusted him and asked what the best way to experience an orgasm was. Wade replied "clitoral stimulation" for her first time, saying it would blow her mind. He listed other ways "women can experience orgasms" including, "clitoris, g-spot, c-spot, breasts (some), anal (most)." Wade later added, "I personally get all my pleasure from seeing you lose all control because of how good you feel and most women go their entire lives not knowing it's possible to feel that good". Wade said, "Your first experience will be burned into your mind for the rest of your life, and I want it to be really, really, really good!"

Wade continued his grooming practice by telling the girl he bought her a gift. On November 9, 2025, Wade told the UC he bought her a present, but didn't tell her what it was, saying it was something she would "really, really like". When she said she was excited, he replied, "And I hope to unwrap you like a present. Have you figured out when you'll be able to sneak away for a day?"

Wade and the UC initially agreed to a meet on December 11, 2025. The UC cancelled because of logistical issues with law enforcement. However, the UC proposed to meet on December 17, and Wade agreed. The meet was scheduled to take place between 5:00 and 6:00 PM at East Park in Bremerton, near the skatepark.

On December 17, law enforcement surveilled Wade while he left his residence at approximately 3:11 PM. On the way, Wade stopped at the Quality Inn in Silverdale. He entered the hotel with a backpack. After leaving the hotel to go back to his vehicle, he no longer had the backpack with him. Later, when he was taken into custody, he had two hotel room keys for room 110 on his person. After a telephonic search warrant was granted for the search of the hotel room, law enforcement discovered a variety of sexual paraphernalia consistent with the different sexual acts Wade suggested in the chats. He brought with him "booty glide personal lubricant", 4 condoms, a used container of lubricant, additional lubricant specifically for sex toys, a dildo wrapped in plastic wrap, a vibrator, four bondage straps, and a newly packaged Air Touch II described as a "clitoral suction rabbit" sex toy. In chats, when the UC expressed a

INCIDENT REPORT	BREMERTON POLICE DEPARTMENT	CASE NUMBER B25006295	SUP NO 3
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concern about pain involved in sex, Wade said, "There's a lot we can do to make sure things aren't painful, or much painful", and then "the pleasure will sort of cancel it out in your brain".

After leaving the hotel, Wade continued to the skate park, arriving at approximately 5:25 PM. A minute after arriving, he texted the UC that he would be there in about 19 minutes. At approximately 5:39 PM, the UC asked if he could meet her by the skate park. Wade replied, instructing her to walk to the bottom of the driveway by the skate park, the location where he had been parked. Wade had been sitting in the parking lot for 14 minutes. Law enforcement believed Wade had taken a substantial step toward attempting to meet with the girl he believed was 11 years old. Shortly thereafter, law enforcement took Wade into custody without incident and transported him back to the police department for an interview.

Wade was read his Miranda Rights in the interview room and agreed to talk to Detective Mulitauopele. While being interviewed, Wade feigned ignorance, saying he had gotten lost in the area while attempting to go to dinner at La Fermata, a restaurant that closed in 2024. However, it was clear from surveillance that Wade went directly to a parking lot in the area, parked, and waited there for the 11-year-old girl.

Detective Mulitauopele told Wade that a mother had discovered chats on her daughter Sarah's phone and turned it into the police. Wade listed Sarah's that he knew and provided their ages without being asked. It wasn't until after this list that Detective Mulitauopele told him about Sarah being 11 years old.

When Detective Mulitauopele confronted Wade with the content of the chats, Wade interrupted, saying, "This is really uncomfortable." After being confronted with additional information in the case, Wade requested an attorney.

Houston Wade committed the crime of communication with a minor for immoral purposes when he knowingly communicated with a person he believed to be an 11-year-old girl, using grooming techniques to present various sex acts he hoped to perform with her at a future date. Houston Wade committed the crime of attempted rape of a child in the first degree when he showed substantial steps to meet with an 11-year-old girl for the purpose of having sexual intercourse in a variety of ways by driving from his residence in Bainbridge Island, renting a hotel room and setting up various sex toys and bondage restraints, and arrived at East Park in Bremerton, WA. He then instructed the person he believed was an 11-year-old girl to meet him near the parking lot where he was waiting with the purpose of ultimately transporting her to a hotel room he had prepared to perform the previously discussed sex acts.

The preceding narrative is not intended to be a complete record of the actions of all officers or a full explanation of the entire incident, but a brief synopsis of the facts leading to the establishment of probable cause at the time of arrest.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and accurate to the best of my knowledge, information and belief.



**BREMERTON
POLICE DEPARTMENT**

1025 BURWELL STREET
BREMERTON, WA 98337

INCIDENT REPORT

CASE NUMBER B25006295	SUPPLEMENT NUMBER
CASE TYPE ICAC	CAD EVENT NUMBER P250178453
REPORTING OFFICER 444 - SMITH, BRANDON	REPORT DATE 11/24/2025

INCIDENT

LOCATION 1025 BURWELL ST US				OCCURRED	DATE	TIME	DAY
PREMISE NAME @BPD				ON OR FROM	11/24/2025	21:01	MON
JURISDICTION BPD				TO	11/24/2025	21:01	MON
AREA	DISTRICT	ASSIGNMENT GIU	SHIFT OTHER	REPORTED	11/24/2025	21:01	MON
RELATED REPORT NUMBERS							

SYNOPSIS

ICAC Investigation with suspect communicating with presumed 11 y/o female.

ADDITIONAL INFORMATION

☐ BEHAVIORIAL HEALTH	☐ DUI (TIME/YEARS)
☐ SEX OFFENSE-INCLUDING FTR	☐ FOLLOW-UP COMPLETED
☐ SRO	☐ TASK FORCE DATA/INDICATORS
School	Use of Force
	Pursuit

STATUS

CASE STATUS CLOSED	CASE STATUS DATE 12/18/2025	DISPOSITION ARREST	DISPOSITION DATE 12/18/2025	APPROVAL B001766/JVERTEFEUIE - VERTEF	APPROVAL DATE 12/02/2025
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RECEIVED - Kitsap County Prosecutor

INCIDENT REPORT	BREMERTON POLICE DEPARTMENT	CASE NUMBER B25006295
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OFFENSES

ENTRY NO 1	VIOLATION/STATUTE 9.68A.090		OFFENSE DESCRIPTION COMMUNICATION WITH MINOR FOR IMMORAL PURPOSES			
ATTEMPTED N	LEVEL	COUNTS	NCIC CODE	DISPOSITION	DISPOSITION DATE	
AGENCY CLASSIFICATION			LOCATION OF OFFENSE			
COURT						
COMMENT						

NARRATIVE

On 11/24/2025, I spoke with SA K Main from NCIS about a suspect who believes he is chatting with an 11 year old female. Those chats currently contain evidence that the suspect is violating RCW 9.68A.090 - Communication with minor for immoral purposes.

The investigation is ongoing and additional case related information will be documented in this report.

NCIS case number related to this investigation is 24NOV25-NWBR-00138-8ENA.

DISPOSITION: FURTHER INVESTIGATION

B Smith 444

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and accurate to the best of my knowledge, information and belief.

INCIDENT REPORT		BREMERTON POLICE DEPARTMENT		CASE NUMBER B25006295	
 BREMERTON POLICE DEPARTMENT 1025 BURWELL STREET BREMERTON, WA 98337		SUPPLEMENT INCIDENT REPORT			
		CASE NUMBER B25006295		SUPPLEMENT NUMBER 1	
		CASE TYPE ICAC		CAD EVENT NUMBER	
		REPORTING OFFICER 444 - SMITH, BRANDON		REPORT DATE 12/17/2025	

INCIDENT

LOCATION BREMERTON, WA 98337					DATE 12/17/2025	TIME 12:38
PREMISE NAME						
AREA	DISTRICT	ASSIGNMENT GIU	SHIFT OTHER	JURISDICTION BPD		

STATUS

WORK FLOW STATUS FINAL	APPROVAL B001766/BJSMITH - VERTEFEUILLE, JASON	APPROVAL DATE 12/18/2025
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NARRATIVE

Supplemental 1 - Overview of investigation leading to the first attempted meet

Additional supplements will provide further details regarding the search warrant results.

Below is a documentation of the investigation to 12/17/2025 involving suspect Houston Wade.

On 11/3/2025, I received an e-mail from Special Agent (SA) Kesley Main with the Naval Criminal Investigative Services (NCIS). Before this e-mail, SA Main and I had discussed undercover (UC) chatting because she had completed the ICAC-certified UC chat class. I learned from the email that SA Main had been chatting with an individual who had expressed interest in meeting with SA Main's UC persona. I later learned that her persona was that of an eleven-year-old girl in sixth grade.

On 11/24/2025, SA Main sent me two pictures related to the suspect. The first picture was an image he had sent her with bookcases in the background. The second picture was of the suspect's dog, on a sidewalk, with an artificial floral wall behind it. SA Main had not identified the suspect yet, but provided key details that would later assist in identifying him. She advised that he claimed to be a professor who taught topics like magnetism and electricity. Detective George was able to identify the location where the dog picture was taken as "The Cove" on 278 Winslow Way E, Bainbridge Island, WA. A brief internet search of physics professors from Bainbridge Island, I identified the suspect as Houston Wade. I compared online images of him to the image sent by the suspect and confirmed it was him. I learned that Wade has a significant digital footprint on social media, hosting a podcast and regularly going live on YouTube.

After reviewing hundreds of public-facing posts by Wade, I was unable to find the image that he sent to the UC anywhere on his social media. The photo features two Funko Pop! figures in the background, which match other images he posted online. SA Main's chats also mentioned Wade going to a Mariners game, which was consistent with posts he made on his Facebook. During Wade's chats with SA Main, he mentioned an issue with his mother and her roommate. Reviewing calls for service, I located a Bainbridge Island report I25000909 that referenced the altercation. I listened to Wade's YouTube Channel to see if he had publicly talked about this. The day of the incident, he made no mention of it in the live YouTube episode, leading me to believe it would not

have been public knowledge.

On 11/25/2025, SA Main documented her chats with the suspect and sent me the probable cause statement for a violation of RCW 9.68A.090 Communication with minor for immoral purposes. She also provided the following case number 24NOV25-NWBR-00138-8ENA for her report. For this PC statement, see attached media.

Using her PC documentation, I applied for and was granted multiple search warrants.

- 1 - Search warrant for the pulse_of_life_ Kik account (warrant number: 2025046718)
- 2 - Search warrant for electronic tracking
- 3 - Search warrant for Comcast IP address (still under judicial review)

During our investigation into suspected user Houston Wade, we discovered a YouTube channel he regularly streams on. On 12/11/2025, the UC had initially coordinated a meet, but issues with preparation caused the meet to be cancelled. On his YouTube, he mentioned having a plan for a "date" with a "young lady," but instead of pointing out the Bremerton area, instead blamed the flooding in and around Snohomish County for the reason the "date" was cancelled. Based on my training and experience, I am aware that adults who are seeking to conceal or minimize inappropriate relationships with minors often use vague or euphemistic language when referring to a minor. Furthermore, adults engaged in these kinds of communications with minors use social media and chatting platforms for the purpose of engaging with children, grooming them, and developing inappropriate relationships. Wade's attempt to solicit a "sexy pic" from the UC is indicative of a pattern of behavior consistent with offenders who groom multiple victims for the purpose of enticement, the collection of sexualized pictures, and ultimately for sexual gratification. His behaviors are consistent with studies that show these types of offenders have multiple victims.

Wade's public referenced to a "young lady" and the discrepancy between the reason the meet was cancelled suggest he may be chatting with another individually, potentially a minor. These same behaviors show Wade could be attempting to meet other minors or collect sexualized images from those victims.

After the conversation began on "Hush." Hush describes itself as "...an anonymous social media app that allows you to express yourself freely without fear of judgment or exposure." Wade and the UC moved to another application, Kik. Kik describes itself as "...an iOS and Android app that lets you connect with friends and groups from all around the world through messaging, chatting and live streaming." Kik is currently one of the highest generators of NCMEC CyberTips for the Bremerton PD agency. While it is used for various reasons, it is favored by users who want to maintain a level of anonymity.

Kik maintains multiple records, including both content and non-content data. Non-content data includes subscriber information (such as email addresses, telephone numbers, and other identifiers) and account information (including connection logs and unique device identifiers). Content user and

INCIDENT REPORT	BREMERTON POLICE DEPARTMENT	CASE NUMBER B25006295
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group data, including the chat messages and media sent by the user.

Evidence of the content contained in chat messages, unique identifiers to tie the use of the account to a specific device and internet service provider, and other associated data is essential to confirm the identity of the suspect and to attribute elements of the crime to that suspect. Picture content will confirm whether the pictures sent by the suspect originated from the phone's gallery or an active photo. Chat content will confirm the dialogue that took place, as recorded in Kik's records. The unique identifiers are essential for associating the device used in these chats for the collection of additional evidence.

Because of the nature of the investigation, disclosure of the UC account name would compromise ongoing undercover investigations actively occurring with that name. Furthermore, while serving the search warrant, law enforcement can rely on previously documented chats between the UC account and the target user account. SA Main utilized the Kik messaging application to communicate with the suspect. Kik only retains a limited number of messages locally within the application, and as a result, earlier portions of the conversation are no longer accessible from the UC account. Therefore, I do not possess screenshots or documentation of the exact wording or timestamps of the initial messages exchanged in the Kik app.

Kik Warrant Return Information

On 12/17/2025 at 1053 hours, Kik provided the warrant return for the search warrant to obtain chat content and records. The provided records only included chats from 9/18/2025 to 12/16/2025 (UTC). Kik only retains chats for 90 days and media content for 60 days. Using IP address identification methods, I learned that during those 60 days, the suspect's Kik account primarily used a NordVPN to maintain anonymity. However, two Comcast IP addresses were involved in a dozen different chat messages. These IP addresses are 73.181.233.169 and 73.83.54.102. Using MaxMind, a tool that identifies and geolocates the general area of a search warrant, I learned that 73.181.233.169 geolocates to Bremerton, Washington, and 73.83.54.102 geolocates to Bainbridge Island, WA.

These two IP addresses will be associated with a residential or business IP address and provide additional identification to confirm the suspect's association with those locations. The residential address or subscriber information would provide evidence of the suspect's location as they engaged in chats with the assumed 11-year-old girl.

I used the above information in my efforts to get search warrants. Additional warrants were written after Wade's arrest and will be documented in further reports.

DISPOSITION: FURTHER INVESTIGATION

B Smith 444
Bremerton PD

INCIDENT REPORT	BREMERTON POLICE DEPARTMENT	CASE NUMBER B25006295
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I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and accurate to the best of my knowledge, information and belief.



**BREMERTON
POLICE DEPARTMENT**

1025 BURWELL STREET
BREMERTON, WA 98337

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER B25006295	SUPPLEMENT NUMBER 7
CASE TYPE ICAC	CAD EVENT NUMBER
REPORTING OFFICER 468 - MULITAUOPELE, CHRISTI	REPORT DATE 12/22/2025

INCIDENT

LOCATION , BREMERTON, WA 98337				DATE 12/22/2025	TIME 08:21
PREMISE NAME					
AREA	DISTRICT	ASSIGNMENT GIU	SHIFT GOLD DA	JURISDICTION BPD	

ADDITIONAL INFORMATION

☐ BEHAVIORIAL HEALTH	☐ DUI (TIME/YEARS)	
☐ SEX OFFENSE-INCLUDING FTR	☐ FOLLOW-UP COMPLETED	
☐ SRO	☐ TASK FORCE DATA/INDICATORS	
School	Use of Force	Pursuit

STATUS

CASE STATUS CLOSED	CASE STATUS DATE 12/18/2025	DISPOSITION ARREST	DISPOSITION DATE 12/18/2025	APPROVAL B004394/RGREEN - GREEN, ROD	APPROVAL DATE 12/23/2025
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RECEIVED: 12/23/2025
Kitsap County Prosecutor's Office

NARRATIVE

CAR / INTERVIEW ROOM / BODY CAMERA DISCLAIMER:

The following incident, to include interview(s), may have been digitally recorded via a body worn camera, interview room, and/or car mounted camera(s), and has been summarized below. The purpose of the summary is to render an overview of what was described. The summary is not a transcription of the recorded interviews. The summary is intended to provide the reader with a general understanding of what was said. Refer to the recording itself for the exact wording.

On 12-17-25, at approximately 1000 hours, I worked as a Detective in the General Investigations Unit (GIU). I arrived at the briefing for the operation planned to arrest suspect HOUSTON CURRY WADE for the attempted rape or molestation of a female named Sarah, whom he believed to be 11 years old. The female was actually an NCIS agent who had been communicating with HOUSTON since September 2025, via the chat app "Hush," which was later continued with the chat app "KIK." HOUSTON had groomed Sarah into sexual conversation by asking about her "hobbies," and hoped she'd speak to him about his "pervy hobbies." He called himself he "devil on your shoulder," explicitly talked to her about orgasm and anal penetration, and described himself as a "bad teacher." He acknowledged that she was 11 years old and in the 6th grade and stated, "You're exactly who I want to talk to." Additionally, he stated, "Have you ever had an older man tell you that you are beautiful? Well, this significantly older man is telling you that you are beautiful (I'm not grandpa age yet, though)." He advised he was "a fan of pigtails," told her to "give in to it," and stated, "Your first experience will be burned into your mind and for the rest of your life, and I want it to be really, really, really good!"

It should be noted that HOUSTON and Sarah initially agreed to meet on December 11, 2025, but had to cancel because of logistical issues with law enforcement. On that same date, HOUSTON live-streamed from his YouTube channel @houstonwade and stated, "I was supposed to go on a date tonight with a young lady," but could not because of the flooding that had occurred in Washington state, specifically. The statement was provided at 17:30 on <https://www.youtube.com/watch?v=LWqw72DvFts>.

A plan was developed for HOUSTON to meet Sarah at the East Skate Park located at the intersection of Schley Blvd and Homer Jones Dr. in Bremerton. HOUSTON believed Sarah resided in the condominiums located on Seringa Avenue and requested that she walk to him when he arrived, roughly between 5:00 and 6:00 PM. Detectives from GIU and DET officers conducted surveillance on the suspect's home, while NCIS Agents and SWAT operators waited at the target location to arrest HOUSTON on arrival. Officer Murphy and I sat in a surveillance vehicle located at the Port Madison Lutheran Church, arriving around 1100 hours. At approximately 1511 hours, HOUSTON left his home in his 2003 Blue BMW Z4 (WA #CMC3961) and headed towards the city of Bremerton. He was surveilled from Bainbridge Island to Poulsbo, then down to Silverdale. In Silverdale, he stopped at the Quality Inn and entered the room carrying a black backpack. When he left, he did not have the backpack. He then traveled to Bremerton and arrived at the target location at approximately 1725 hours. A minute after arriving, he texted Sarah that he would be there in about 19 minutes. At approximately 1739 hours, Sarah asked if he could meet her by the skate park. HOUSTON replied, instructing her to walk to the bottom of the driveway by the skate park, the location where he had been parked. HOUSTON had been sitting in the parking lot for 14 minutes. HOUSTON was then

RECEIVED: 12/23/2025

Kitsap County Prosecutor's Office

INCIDENT REPORT	BREMERTON POLICE DEPARTMENT	CASE NUMBER B25006295	SUP NO 7
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successfully arrested by the KCSO SWAT Team without incident.

Furthermore, HOUSTON's driving while en route to the target location appeared erratic and abnormal, performing "heat checks" at multiple locations along the way. Based on my training and experience, "heat checks" refer to abnormal accelerations, decelerations, turns, braking, and signals that may alert the suspect to anyone following behind them. In HOUSTON's case, he made several abnormal turns onto HWY 305 and off 305, onto 303 and off 303. He then got an oil change at the Jiffy Lube in Silverdale and drove through several parking lots instead of taking roads. On 12-9-25, HOUSTON posted the following to his Facebook page and appears to be his motivation for staying off several main highways (HWY 3, HWY 303) during his drive to Bremerton regarding FLOCK cameras being used by law enforcement:

"City council friends, please stay away from these terrible Big Brother cameras. They're so easily hackable that you can literally access the police networks from them or even turn them into bitcoin miners or Wi-Fi hotspots. Clarence Moriwaki Ashley Marie Kirsten Hytopoulos
<https://youtu.be/uB0gr7Fh6lY?>"

At approximately 1800 hours, HOUSTON was transported to BPD Interview Room 3. He reported the following:

I introduced myself and offered him water and snacks. He accepted the bottled water provided. I asked him if he was okay and had any injuries from the arrest, which he denied. He believed there was an ICE Raid with Federal Agents and stated, "Is this an ICE thing or something because I was meeting on the internet?" I told him that we were local law enforcement and had no affiliation with ICE. I advised him that I needed to read him his Miranda rights because he was in a police facility, and he understood. I also advised him that everything in the room was audio- and video-recorded. He agreed to speak with me, and I told him that a girl named Sarah appeared to be chatting with him, and her mother found her phone and alerted law enforcement. Sarah was uncooperative with us, but her mother found the messages and was concerned about the content. HOUSTON then asked, "Who's Sarah?" He mentioned his friend, Sarah Knight, but her mother died two years prior. He told me he had a free evening and wanted to go to a restaurant named La Fermata for a steak (closed in 2024). He forgot how to get there and pulled off the road to search for the address, only to be surrounded by police. He stated that "things have been kinda shitty, so I just wanted a good steak." Detective Trask entered the room, and I recapped what had been stated, which HOUSTON agreed. I asked him what his plan for the day was, and he said that he was from Bainbridge Island, to which I responded, "That's a long way for a steak." He advised that it was one of the best he'd ever had, at which point I redirected him back to Sarah. He maintained that he did not know her and stated that his boss was named Sarah, but she was "45," and there was another friend named Sarah who was "42." I have not mentioned the age of the girl in question yet.

He maintained an ignorant attitude, at which point I advised him that Sarah in question was 11 years old. He then stated, "I have not had any conversations with 11-year-olds that I'm aware of." He then reported he was in a romantic conversation with a girl named "Brenda" on Hinge, but she was in her 30's. He reported she lived in Lake Stevens. He was very confused and "freaked out" by the situation and denied having possession of any drugs, firearms, or illicit items in his car. He advised that he was going to meet Brenda last week, but she was unable to reach him due to the flooding, and described her as having brown hair and tanned skin. He advised that this was his plan for the day, and he had several enemies who might try to set him up, specifically Rick Rynearson. He suggested that he had harassed him for 9 years, and none of the restraining orders had been successful; he has YouTube

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videos about him and has tweeted about him 40,000 times. He believed Ryneanson wanted him dead and wanted to ruin his life. He had not seen him in person since 2017 but mentioned a Reddit page called "Houston Wade Lies" and his own YouTube Page, where he answers questions and discusses politics and science. I then asked him to walk me through his day in detail. He advised that he slept in because it was his day off, messaged a man who was hiring him for a sales position, spent time with his dog and cat, and then stated, "I wanted to get steak, and I wanted to get laid." He came to Bremerton to find someone to sleep with because it had "been a while." He mentioned that he would go to the "Horse and Plow," which I corrected him was the "Horse and Cow" bar, so he could find a "Navy wife" to have sex with. I then reminded him that the USS NIMITZ had just returned, and it was likely a bad time. He then stated he went to Jiffy Lube in Silverdale and checked into a hotel in Silverdale, hoping to have a "Soiree" and had only been chatting with "Brenda." He stated he gets 300 messages a day from his YouTube viewers but had not been chatting romantically with anyone else on any other apps. He reported he was on Hinge and Bumble but thought he was encountering very hot AI bots. I then asked him to tell me about his "Hush" account, and he stated, "I don't know what that is." I then showed him a photo of himself and his dog, which he shared with Sarah in the chats, and he agreed that it was him. He also named his dog, "Yeah, that's Monkey Butt." I then showed him a picture of Sarah which was sent to him in the chats and asked if he had ever seen this photo before, which he denied. He stated, "No, I don't think so." I then asked him to list out every chatting app he was using, to which he stated Hinge, Bumble, Twitter, Facebook, and Instagram. I could see him beginning to panic and attempting to come up with additional details, at which point I asked him if he was a teacher. He stated he was a Math and Science teacher at the Art Institute of Seattle, the Seattle Film institute, and Everett College but hadn't taught since 2022. I then asked him about the following quotes and usernames:

- "The best part about teaching is the students."
- "Authority Figure."
- "The Captain."
- Kik Account

He denied having a Kik account, denied knowledge of the usernames, and denied the statement. I started to advise him of the evidence that was stacked against him, and he maintained that he was not chatting with anyone, was not setting up for anything, and "wanted to get laid tonight." I asked him what brought him to the Skate Park, to which he responded, "Where's the skate park?" He stated he did not know where the Skate Park was. He maintained that he pulled over to look for the address of a restaurant that had been closed for over a year.

Detective Trask then asked him when he last went to La Formata, to which he responded, 2014 or 2015. He then advised that he knew the restaurant was in the Manette neighborhood and was idling on his phone when he believed he was being pulled over because he had parked too close to the curb. He advised that his second thought was that "Trump hates me" because he said, "mean things on the internet." Detective Trask then told him that La Formata was closed. I then asked him about his hobbies, several of which he had previously shared with Sarah in Kik chats. I told him I didn't think he was trying to force Sarah to do anything, and that the evidence was already documented. Yet, he maintained that he was not forcing anyone to do anything, had no plans for the night, and was not chatting with Sarah. Additionally, he stated, "I was hoping to have a good steak, find a Navy wife, and clear out some cobwebs." I then opted to take a break in the interview.

While Det. Trask and I were out of the room, HOUSTON made the following statements:

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"Monkey Butt," while looking at a picture of his dog.

"That's me in my office," while looking at a picture of himself.

"I don't think I know you," while looking at a picture of Sarah.

"Anyone's kid named Sarah who has kids. Sarah has kids, but that's not her. Sarah, her daughter's name is something else. Uh, Stacey's kids are adults. Jeffrey's kids? I have no idea. His kids are named. Who has kids?"

I asked him if he had any new memories, and he denied. I asked him if he recognized the username "Itssarah00001" or "Pulse of life," which he denied. Det. Trask advised HOUSTON that he was on scene during the arrest and that his explanation of "ICE and long rifles" coming to arrest him under the cover of darkness for parking too close to a curb was not reasonable. HOUSTON agreed. Trask then asked, "How would I know exactly where you're at?" He stated he did not know. I then told him we were playing "Devil on the shoulder" and asked him to put himself in our shoes. He then stated that he believed it to be random at first, but did not believe it felt random. Det. Trask then asked if HOUSTON was good with technology, to which he responded, "I fuck stuff up all the time." He was confronted with our knowledge of his use of the Hush app, the Kik app, and NordVPN, which led us to his IP Address. We told him that we wanted him to be completely honest and that it would benefit him in the long run.

He then stated:

"I'm just currently freaked out and trying to process what the hell is going on, cause this is going way differently than the evening I had planned."

I asked him, "Well, what did you have planned?"

He stated, "I'd say I have an evening planned, but really it was more shot in the dark. Well, I mean it was more get outta the house, get laid, and that's not happening. So."

I then asked him about the hotel he mentioned earlier, and he stated he stopped at the Quality Inn in Silverdale and left "Some sexy stuff, cause I was hoping to have a rumble tonight." I asked him to clarify what he brought, and he stated, "toys, and lube, and condoms, and stuff," and he advised, "In my experience, Navy wives are freaky." He described a backpack full of vibrators, lube, and condoms," at which point I explained that I was pretty confident of him considering his situation. He then changed his story and advised that he had started conversations with two ladies on the Hinge app but had not heard back from them. I then read several chats between him and Sarah, to which he responded, "This is really uncomfortable." I then told him I would be uncomfortable too if a cop was reading my chats with an 11-year-old girl back to me, and he stated, "Yeah. Well, not me."

He was reminded that all the evidence was already compiled, and his chats, his IP address, the photos sent, and the hotel with a bag of sex toys, were all incriminating. I then asked him if he would end up on the Bainbridge Island Bad List, if he was another Michael Laney, the Chicken Coop member, Epstein, or Trump; each of whom are main topics that he spoke about on his social media platforms with an obsessive compulsion. I asked him what his deceased fiancée, Veronique, would have thought of his behavior. He believed she would be proud of the decisions he's made since her passing. I then told him I thought he was another wealthy man from Bainbridge Island who used his position of power as an "Authority Figure" (teacher) to take advantage of the most vulnerable girls

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from a single-family home in the low-income city of Bremerton. I told him that the photo sent to him could not be confused for a teen or a woman over the legal age of consent. I told him that we have chats showing that he acknowledged her age as 11 years old and that she was in 6th grade. I observed that his face became red, he had a scowl on his face, and he could not stop twiddling his fingers. He then stated, "I am sensing from what you're telling me that whatever's going on, I'm absolutely screwed." He then invoked his right to an attorney and ended the interview. It should be noted that HOUSTON appeared to be a proficient pathological liar, using both omission and slightly distorted truths to attempt to lead Detectives off his true nature.

We then left the interview room, at which point Officer Judd retook custody of him and transported him to the KCSO Jail for Rape of a Child in the first degree (attempted) and immoral communications with a minor.

End of report.

Mulitauopele #468
12-22-25

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and accurate to the best of my knowledge, information and belief.

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NARRATIVE

CERTIFICATE OF PROBABLE CAUSE

AGENCY: Bremerton PD

REPORT NUMBER: B25006295

CLERK CODE:

SUSPECT'S NAME: Houston C Wade

BIRTH DATE: 5/22/1981

COURT: Kitsap Superior Court

TITLE OF CRIMES ARRESTED FOR AND RCW'S:

RCW 9.68A.090 Communication with minor for immoral purposes (Felony)

RCW 9.68A.100 - Commercial sexual abuse of a minor x2

RCW 9.68A.070.1 - Possession of depictions of minor engaged in sexually explicit conduct first degree

RCW 9.68A.070.2 - Possession of depictions of minor engaged in sexually explicit conduct second degree

ARREST DATE: 1/8/2026

ARREST TIME: 1600 hours

LOCATION OF CRIME: 13355 N Madison Ave NE, Bainbridge Island, WA

PROBABLE CAUSE:

On December 17, 2025, Houston Wade (DOB 5/22/1981) was taken into custody for communication with a minor for immoral purposes and attempted rape of a child in the first degree when he attempted to meet who he believed to be an 11-year-old girl on Schley Blvd in Bremerton, WA.

After the arrest, a search warrant on the 2003 BMW Z4 he arrived in revealed that a NUU S6603L cell phone was found under the driver's seat. A search warrant and an expansion of the NUU cell phone search were granted, resulting in additional evidence. A Samsung Galaxy Note 10+ was taken from Wade's person during the arrest. A search warrant for the Samsung Galaxy Note 10+ was granted, providing corroborating evidence that linked both devices to each other and Wade.

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Current network connections on the NUU cell phone indicated that the phone had successfully connected to various WiFi networks. "ClubNepotism" and "MonkeyButt" are Wade's home WiFi names. "Abigail" and "abigail" are his mother's home WiFi names. "Samsung Galaxy S8+ 2271" was the name of the hotspot he connected to from his personal Samsung Galaxy Note 10+. The name appears to have carried over from a backup associated with his previous Samsung Galaxy S8+ cell phone. A Galaxy S8+ was later found in a search of his residence.

The NUU cell phone appeared to be set up around January 25, 2025. The NUU cell phone had Kik, Hush, Whisper, Gmail, and other applications installed. This cell phone was used by Wade to communicate with what he believed to be an 11-year-old girl. The Android ID identifier from records provided by Kik matched the same in the settings for the Kik application installed on the NUU cell phone.

The NUU cell phone had an Instagram account logged in with username "Cashspoiler", display name "Wealth Manager", and bio "If I follow you it is because I want to spoil you sc profchamp ~ message if you want what I want". In February of 2022, multiple posts were made on the account with pictures of bands of one-hundred-dollar bills. Text in these posts includes: I want you to want this, I want you on my "team", and Cum see what it's all about. While the first two are text over pictures of money, the third is a video that features a band of one-hundred-dollar bills sticking out of the user's green denim jeans, flipping through the bills. While the NUU cell phone was set up in 2025, I requested that the warrant be expanded back to February 2022 to see if any messages, emails, or historical information had been synced to the device related to the Instagram account. The expansion led to the discovery of a victim Wade first contacted on Instagram on February 9, 2022, RS. I submitted a search warrant to Instagram for the Cashspoiler account (display name Wealth Manager) from Wade's NUU cell phone and received chats dating back to 2019.

Through my investigation, I have identified RS (DOB: 12/20/2005). She was a 16-year-old high school student in the Tacoma area, now 20 years old. After identifying RS, I contacted her and conducted a phone interview on December 26, 2025. RS confirmed that she had spoken with the "Wealth Manager" account on Instagram. She confirmed she sent images and video of herself. She explained that in February 2022, she snuck out of the house, met with Wade in the parking lot, and went to a hotel in Tacoma with him, where they had sex, though she couldn't remember which hotel exactly. At the time I spoke with RS, I didn't have the Instagram warrant return with greater context to their conversation.

After reviewing the Instagram chat messages between RS and Wade, I learned the following information. Wade's first message on February 9, 2022, at 4:15 PM was, "I take it that since you followed me you have interest in being a sugar baby?" Wade explained his intent was to "shower" her with "gifts and money", but he did "expect a lot in return". He explained he wanted to make her his "plaything" and "sub". He explained the sub/dom relationship like this: "Well, it's a power dynamic. There is a 'dom' (dominate) and a 'sub' (submissive). Basically, the more you do what I say, the more I reward you". When Wade asked what RS wanted out of the arrangement, she said "i honestly didnt know". Wade asked if she wanted to be made to do things by an "authority figure". Wade told her she could refer to him as "Sir" or "Professor". Wade encouraged her to sneak out and meet him, encouraged her to send "the most creative dirty pictures" she could think of. Wade told her what to wear when she snuck out to meet him, "I like bikini cut panties. A tight t-shirt, no bra. Whatever else you choose to wear is up to you. If you like to fool around in public a loose skirt is always a good choice, but it may be a bit cold for a walk at night" and "I want you shaved and smooth". This wording is almost identical to the language Wade used when attempting to meet the UC on December 17, 2025.

Wade further promised to give her a burner phone as a gift and eventually did so. Wade also said, "Have to make a stop an an [sic] adult store to pick some playthings up for you". Based on the content of the chats, Wade booked a hotel for February 9, 2022, but plans fell through when RS didn't show up at the church they had

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agreed to meet at. He rescheduled for the night of February 12, which turned into the early morning of February 13, when RS met him at the church. Earlier on the 12th, Wade messaged, "I've been rock hard since Wednesday. I want to tear you apart so bad". Wade checked in with RS later that day, apologizing for not messaging her sooner, as he had been busy at a Super Bowl party, and asked if she was sore from their time together.

RS and Wade corresponded over two years after he lured her with promises of money and gifts. Wade encouraged RS to "seduce" girls younger than her to recruit them for Wade's sexual exploitation. Wade specifically mentioned other cheerleaders at RS's school, even engaging in chats on Instagram with them. Wade and RS communicated through multiple platforms, including Instagram, Gmail, and Google Chat.

RS was a 16-year-old high school sophomore when she was exploited. The Gmail account set up on the NUU cell phone was wealthyman3000@gmail.com with the name "Wealthy Man". Wade had provided RS this email address in their Instagram chats. RS used the alias "Pasiely Hendricks" in her emails. The first email was from RS on March 9, 2022, in which she identified herself from Instagram. A separate email thread began on April 6, 2022, from a slightly different email where RS sent, "Hey it's me pasiely". The Gmail correspondence included Wade's requests for illicit, sexual images of RS. Prior to these emails, Wade had already asked for and received other images of RS in their Instagram chats.

While reviewing email correspondence, I found that RS sent one picture and one video of herself. While other pictures had been sent in the emails, only these two were downloaded to the NUU cell phone with a "modified" date of August 19, 2025, showing Wade had knowingly interacted with that specific media recently. The email before RS sent the picture, Wade wrote, "You're lovely. Give me a dirty one of you at school". RS replied with a topless image of herself while at school. The picture depicted a young, white female with long brown hair and brown or hazel eyes, wearing nothing but a gold chain necklace with a cross. The picture shows her face and upper torso, ending just below her breasts. Wade responded, writing, "You are beautiful! I probably won't have a chance to chat until late tomorrow afternoon, but you should film yourself making a mess at school" [sic]. In response, RS sent a video of herself masturbating. The video is 3 minutes and 18 seconds. The video focuses on her genitalia and fingers. She appeared to be wearing a blue top, possibly a sports bra. Her face isn't visible in the picture, but the timestamps of creation and sending are consistent with it being created just prior to being sent. After receiving the video, Wade wrote, "You are just the wettest thing. That's going to keep me rock hard all day long".

On August 17, 2025, Houston Wade began chatting with an Instagram account belonging to a 14-year-old girl from the area, OG (DOB: 5/28/2011). I identified OG through information on her Instagram that led me to speak with her volleyball club's director. I later spoke with OG's mother to confirm OG's information and Instagram name. Wade began the conversation by telling OG she was beautiful and they should "have some fun". Shortly after, even though OG is 14, she identified herself as a 15-year-old in chats when she said, "yeah get a life creep im 15 weirdo". Wade's response was, "I have a life, and being a creep is the goal. What I have to offer doesn't interest everyone, and that's ok. If you ever find yourself wanting money, gifts, trips, or whatever you desire, you know where to find me". OG reiterated two more times that she was an underage, 15-year-old minor. OG had believed Wade wanted photos of her, but Wade replied, "I don't want photos of you. I want you." Just before OG told Wade to stop messaging her, he wrote, "Oh come on, you know you get horny. Everyone does. Perhaps it's something mundane, a boy you know... Or maybe it's something really kinky like a compromising situation. When I was young I really wanted to do it right there on the alter [sic] at the front of the church. Just seemed so naughty (shrug emoji)".

Probable cause exists for RCW 9.68A.090 Communication with minor for immoral purposes, as Houston Wade, while knowing OG was a female minor, engaged in electronic communication with her for the purpose of grooming, luring, and convincing her to engage in sexual conduct with him.

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Probable cause exists for RCW 9.68A.100 Commercial Sexual Abuse of a Minor, as Houston Wade, while knowing RS was a female minor, offered her money and gifts in exchange for engaging in sexual conduct with him. An additional victim, OG, was offered money, gifts, travel, or whatever she desired in exchange for engaging in sexual conduct with him.

Probable cause exists for RCW 9.68A.070.1 Possession of depictions of minor engaged in sexually explicit conduct in the first degree, as Houston Wade knowingly possessed a visual depiction of a minor female masturbating.

Probable cause exists for RCW 9.68A.070.2 Possession of depictions of minor engaged in sexually explicit conduct in the second degree, as Houston Wade knowingly possessed a visual depiction of a minor female's unclothed breasts wherein his response clearly showed sexual stimulation of the viewer.

The preceding narrative is not intended to be a complete record of the actions of all officers or a full explanation of the entire incident, but a brief synopsis of the facts leading to the establishment of probable cause at the time of arrest.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and accurate to the best of my knowledge, information and belief.

B Smith 444

APPENDIX B

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DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

SECNAVINST 5430.107A
NCIS
19 Jun 2019

SECNAV INSTRUCTION 5430.107A

From: Secretary of the Navy

Subj: MISSION AND FUNCTIONS OF THE NAVAL CRIMINAL INVESTIGATIVE
SERVICE

Ref: See enclosure (1)

Encl: (1) References
(2) Policy
(3) Definitions
(4) Missions and Functions
(5) Other Commands and Organizations Relationship with
NCIS
(6) NCIS Board of Advisors

1. Purpose. To establish policy and assign authorities and responsibilities for the Naval Criminal Investigative Service (NCIS) and its relationship with other Department of the Navy (DON) activities pursuant to references (a) through (co).
2. Cancellation. SECNAVINST 5430.107.
3. Policy. See enclosure (2).
4. Definitions. See enclosure (3).
5. Missions and Functions. See enclosure (4).
6. Other Commands and Organizations Relationship with NCIS. See enclosure (5).
7. NCIS Board of Advisors (BOA). See enclosure (6).
8. Applicability. This Instruction applies to the Offices of the Secretary of the Navy (SECNAV), the Chief of Naval Operations (CNO), the Commandant of the Marine Corps (CMC), and all United States Navy (USN) and United States Marine Corps (USMC) installations, commands, activities, field offices, and all other organizational entities within the DON.

9. Records Management

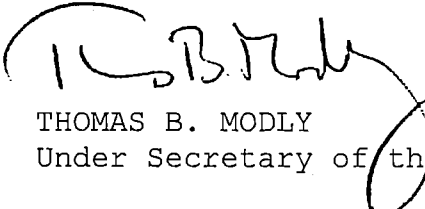
a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned according to the records disposition schedules found on the Directives and Records Management Division (DRMD) portal page:
<https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/SitePages/Home.aspx>.

b. For questions concerning the management of records related to this instruction or the records disposition schedules, please contact your local Records Manager or the DRMD program office.

10. Forms and Reports

a. Forms. DD Form 2791, Notice of Release/Acknowledgement of Convicted Sex Offender Registration Requirements, is available from The Official Department of Defense (DoD) Website for DoD Forms
<https://www.esd.whs.mil/Directives/forms/>.

b. Reports. The reporting requirements contained in enclosure (4), paragraph 7, and enclosure (5), paragraph 2 are exempt from information collection control, per reference (cp), Part IV, paragraphs 7n and 7o.



THOMAS B. MODLY
Under Secretary of the Navy

Distribution:

Electronic only, via Department of the Navy Issuances Web site
<https://www.secnav.navy.mil/doni>

SECNAVINST 5430.107A
19 Jun 2019

REFERENCES

- (a) 10 U.S.C. §8013
- (b) SECNAVINST 5430.7R
- (c) DoD Instruction 5505.03 of 24 March 2011
- (d) DoD Directive 5240.02 of 17 March 2015
- (e) SECNAVINST 5720.42G
- (f) SECNAVINST 5720.44C
- (g) SECNAVINST 7042.12E
- (h) 18 U.S.C. §701
- (i) SECNAVINST 5580.3
- (j) 5 U.S.C. §303
- (k) SECNAVINST 1650.1H
- (l) 10 U.S.C. §8750
- (m) SECNAVINST 5500.29C
- (n) DoD Instruction 5240.04 of 1 April 2016
- (o) DoD Instruction 5505.02 of 29 August 2013
- (p) SECNAVINST 3850.2E
- (q) Public Law 99-145 §1223
- (r) 10 U.S.C. §275
- (s) SECNAVINST 5239.3C
- (t) DoD Directive 5240.06 of 17 May 2011
- (u) DoDM 6025.18-R, Implementation of the Health Insurance Portability and Accountability Act (HIPPA) Privacy Rule in DoD Health Care Programs of 13 March 2019
- (v) SECNAVINST 5800.12B
- (w) DoD Instruction S-5240.23 of 13 December 2010
- (x) DoD Instruction 5525.07 of 18 June 2007
- (y) DoD Instruction O-5505.09 of 27 November 2013
- (z) DoD Instruction 5505.16 of 23 June 2017
- (aa) SECNAVINST 5430.92C
- (ab) DoD Instruction O-5240.24 of 8 June 2011
- (ac) SECNAV M-5510.36
- (ad) DoD Instruction 5240.26 of 4 May 2012
- (ae) DoD Instruction 5240.19 of 31 January 2014
- (af) DoD Instruction 2000.12 of 1 March 2012
- (ag) DoD Instruction O-2000.22 of 19 June 2014
- (ah) DoD Directive 5210.48 of 24 April 2015
- (ai) DoD Instruction 5210.91 of 12 August 2010
- (aj) SECNAVINST 3850.4A
- (ak) DoD Instruction 5240.05 of 3 April 2014

SECNAVINST 5430.107A
19 Jun 2019

- (al) Memorandum of Understanding between the Federal Bureau of Investigation and the Department of Defense Governing Information Sharing, Operational Coordination, and Investigative Responsibilities, August 2, 2011, and those portions of the 1979 and 1996 MOUs that remain in effect
- (am) SECNAVINST 5820.7C
- (an) DoD Instruction 5240.10 of 5 October 2011
- (ao) DoD Instruction O-5240.21 of 14 May 2009
- (ap) SECNAV memo, Department of the Navy Security Executive of 25 Apr 13
- (aq) DoD Instruction 3025.21 of 27 February 2013
- (ar) DoD Instruction S-5240.09 of 2 February 2015
- (as) 10 U.S.C., Chapter 47
- (at) Sixth Amendment to the United States Constitution
- (au) 10 U.S.C. §846
- (av) 50 U.S.C. §3121
- (aw) DoD Instruction 5505.10 of 15 August 2013
- (ax) SECNAVINST 5800.11B
- (ay) DoD Instruction 5525.20 of 14 November 2016
- (az) SECNAVINST 5510.36A
- (ba) JAGINST 5800.7F
- (bb) 50 U.S.C. §3381
- (bc) Assistant to the President for National Security Affairs Memorandum, Early Detection of Espionage and Other Intelligence Activities through Identification and Referral of Anomalies of 23 August 1996
- (bd) SECNAVINST 5000.34F
- (be) DoD Instruction S-5240.17 of 14 March 2014
- (bf) E.O. 12333
- (bg) DoDM 5240.01, Procedures Governing the Conduct of DoD Intelligence Activities of 8 August 2016
- (bh) 5 U.S.C. §552a
- (bi) SECNAVINST 5710.28A
- (bj) SECNAVINST 5710.27A
- (bk) SECNAVINST 5510.37
- (bl) DoD Instruction 5240.22 of 24 September 2009
- (bm) DoDM 5200.02, Procedures for the DoD Personnel Security Program (PSP) of 3 April 2017
- (bn) SECNAVINST 5239.19
- (bo) SECNAVINST 3052.2
- (bp) SECNAVINST 3070.2
- (bq) SECNAVINST 3501.1D
- (br) DoD Directive 5205.07 of 1 July 2010
- (bs) DoD Directive 5205.16 of 30 September 2014

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- (bt) OPNAVINST 5585.2C
- (bu) OPNAVINST F3300.53C
- (bv) Annex 3 to the Memorandum of Agreement between the Central Intelligence Agency and the Department of Defense of 6 December 2007
- (bw) Annex 4 to the Memorandum of Agreement between the Central Intelligence Agency and the Department of Defense of 11 June 2012
- (bx) DoD Instruction 5525.11 of 3 March 2005
- (by) 18 U.S.C. §3261-3267
- (bz) SECNAVINST 5210.8F
- (ca) Public Law 95-452 as amended
- (cb) DoD Instruction O-3300.04 of 25 May 2012
- (cc) DoD Instruction 5525.16 of 29 August 2013
- (cd) SECNAVINST S5460.3H
- (ce) DoD Instruction 5200.39 of 28 May 2015
- (cf) 10 U.S.C. §1034
- (cg) DoD Instruction 5525.19 of 4 May 2016
- (ch) E.O. 13526
- (ci) OPNAVINST 5102.1D
- (cj) SECNAVINST S3850.3A
- (ck) DTM-17-004, DoD Expeditionary Civilian Workforce of 25 January 2017
- (cl) UNSECNAV memo, Order and Terms of Succession to the Powers and Duties of the Department of the Navy Presidentially Appointed, Senate-confirmed Leadership Positions of 24 January 2019
- (cm) Inspector General of the Department of Defense Memorandum, Request for Clarification of Language Relative to Use of Confidential Informants as required in DoD Instruction 5505.03 "Initiation of Investigations by Defense Criminal Investigative Organizations (DCIOs)" of 31 August 2018
- (cn) Military Rules of Evidence, part III, Section I, General Provisions, Rule 507. Identity of informants
- (co) Memorandum of Agreement between the Department of Defense and the Central Intelligence Agency - Operational Matters, of 20 July 2005
- (cp) SECNAV M-5214.1

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POLICY

1. Policy. Pursuant to reference (b), the Under Secretary of the Navy (UNSECNAV) provides oversight of NCIS. UNSECNAV will be supported by the General Counsel (GC) of DON and the Deputy Under Secretary of the Navy (DUSN). In the absence of the UNSECNAV, oversight will transfer to the Assistant Secretary of the Navy for Research, Development and Acquisition (ASN (RD&A)), pursuant to reference (cl).

2. The Director, NCIS (Director), is a staff assistant and directly reports to the SECNAV pursuant to reference (b).

3. NCIS is a Federal law enforcement agency, Defense Criminal Investigative Organization, the DON Military Criminal Investigative Organization, and the DON Military Department Counterintelligence Organization (MDCO). NCIS will execute its mission in accordance with enclosures (4) and (5), and applicable laws, Executive Orders, and policies.

a. The Director is the DON Senior Official for criminal investigations and intelligence (CI), to include terrorism investigations and related operations pursuant to reference (b).

b. The Director will serve as the DON single point of contact with Federal, state, local, and foreign law enforcement, intelligence, CI, and security agencies for matters falling within the exclusive jurisdiction of NCIS pursuant to references (b), (c), (n), (p), (al), (am), and (an). For matters where NCIS has primary jurisdiction or is the DON lead agency, and the USN or USMC have overlapping criminal or CI jurisdiction, USN and USMC may liaise with these agencies after coordination with NCIS.

c. As the DON Senior Official for criminal investigations, the Director will initiate, conduct, and direct independent criminal investigations and associated operations and activities regardless of command authorization.

d. Only the SECNAV may direct NCIS to delay, suspend, or terminate an investigation, other than an investigation being conducted at the request of the DoD Inspector General (IG), pursuant to references (c), (d), (n), (o), (ca), and (ce).

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e. The UNSECNAV shall serve as the approving authority for all Offensive Counterintelligence Operations (OFCO) operational proposals.

f. NCIS, as the DON lead agency for CI, has primary jurisdiction for CI matters and the authority necessary to conduct the full range of CI activities across the Department. NCIS has exclusive authority to conduct CI investigations and is the DON lead agency for OFCO pursuant to references (b), (c), (n), (p), and (cj).

g. DON commands, activities, and personnel will comply with requests by an NCIS special agent for information or assistance pursuant to an authorized investigation or operation as if made by the Secretary, including providing access to installations, information and records, pursuant to reference (b) and this instruction. If immediate access is required to special access required or similarly restricted areas, NCIS will notify the Director, DON Special Access Program Central Office (DON SAPCO) or the Director of Naval Intelligence (DNI) or Director of Intelligence (DIRINT), as appropriate, as soon as possible.

(1) Pursuant to references (c), (cm), and (cn), NCIS may use DON personnel as cooperating witnesses and confidential informants in support of criminal and CI investigations and operations.

(2) DON personnel who report acts or omissions to NCIS they reasonably believe to be violations of law or regulation, or to constitute fraud, waste, or mismanagement, will be free from reprisal and retaliation. No adverse action may be taken against an individual who reports, provides testimony, or otherwise assists NCIS with an investigation or proceeding pursuant to references (v) and (cf).

(3) Use of military personnel for CI operational purposes will be coordinated and approved by the commander having command and control of the personnel and the Service (Assistant Commandant of the Marine Corps (ACMC), CMC or Vice Chief of Naval Operations (VCNO) in accordance with references (ar) and (cj).

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(4) NCIS use of DON civilian, and contractor personnel does not require approval from within the member's chain of command.

(5) Commanders will ensure that NCIS information regarding investigations, operations, and related activities is not compromised and, to the extent possible, is limited to senior command personnel.

4. NCIS is the executive agency for all protective service matters within the DON with exclusive jurisdiction and authority to conduct and coordinate Protective Service Operations (PSO) for high risk personnel pursuant to references (af) and (ag).

5. NCIS is the only DON component approved to conduct polygraph examinations pursuant to references (ah) and (ai).

6. The Director will issue credentials to NCIS personnel accredited to perform investigations, specialized investigative and analytical functions, and related activities.

a. NCIS agents who identify themselves using special agent credentials will be exempt from all routine searches of their persons, possessions, and materials, including their vehicles and occupants therein when accessing DON owned, controlled or managed facilities or activities. Individuals escorted by an NCIS special agent will not be required to display identification.

b. NCIS special agents have, at a minimum, a top secret security clearance, will be considered as having a need to know, and will be granted access to installations, facilities, spaces, information, or material classified up to top secret in the performance of their official duties.

c. Persons accredited by the Director as special agents, investigators, and operational representatives are authorized to administer oaths and take sworn statements in execution of official investigative duties pursuant to reference (j).

d. DON personnel not accredited by the Director are prohibited from making any representation that indicates they have NCIS accreditation. Use of the title "Special Agent" by

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anyone other than an accredited NCIS special agent within the DON is prohibited.

e. The Director may issue Law Enforcement Officers Safety Act photographic identification to active, retired, and separated law enforcement personnel pursuant to reference (i).

7. The Director will authorize NCIS special agents to carry NCIS-approved firearms at all times, while on or off duty, on and off installations, aircraft, and ships. NCIS special agents are required to carry firearms while on official business, except as follows:

a. Exclusion Areas. When in "exclusion areas" where special weapons/systems are stored, the need for a special agent to carry a firearm in such areas will be left to the discretion of the commander or commanding officer having responsibility for the "exclusion area."

b. Court Rooms. NCIS personnel may be armed in military court rooms as long as the weapon is concealed and the presiding judge is notified and approves.

8. The Director may authorize accredited NCIS non-special agent personnel to carry firearms in accordance with reference (m).

9. NCIS will maintain, direct, and operate the Multiple Threat Alert Center (MTAC) and host the Department of Defense - Federal Bureau of Investigation (FBI) Global Watch to provide Indications and Warnings of terrorist, foreign intelligence, cyber, and criminal threats pursuant to references (p) and (al).

10. Any proposed use of Special Access Program (SAP) resources or information will be coordinated with the Director, DON SAPCO, in accordance with reference (cd).

11. The Director will make original security classification determinations for NCIS information pursuant to reference (ch).

12. The Director is an Initial Denial Authority for Freedom of Information Act requests with release and denial authority for all NCIS information pursuant to reference (e).

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13. The Secretary has delegated authority to the Director to claim the privilege under Military Rule of Evidence 506 to protect Government information other than classified information that falls under the cognizance of NCIS pursuant to reference (as).

14. The Director is the release authority for information provided to the public concerning NCIS investigations of loss or compromise of classified information and other matters under the purview of NCIS pursuant to references (e) and (f).

15. The Director may obligate and expend Emergency and Extraordinary Expense funds pursuant to reference (g).

16. The Director serves as an advisor to the CNO as Special Assistant for Naval Investigative Matters pursuant to reference (ap).

17. The Director is authorized to award the Superior Civilian Service Award and lesser decorations pursuant to reference (k).

18. NCIS will be supported by the United States Naval Reserve.

19. The NCIS BOA will assist the SECNAV in providing DON corporate governance to ensure maximum NCIS support for all DON components in accordance with Enclosure (6).

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DEFINITIONS

1. Anomalies. Foreign power activity or knowledge, inconsistent with the expected norm, that suggests foreign knowledge of United States national security information, processes, or capabilities.
2. Criminal Operations. Efforts to acquire intelligence about or interdict criminal activities or enterprises on or off DON establishments that significantly affect the DON establishment, through the use of specialized investigative techniques or equipment, including: the employment of undercover agents; the formal registration or tasking of sources; technical surveillance equipment and investigative tools; oral, wire, and electronic intercepts; pen registers; trap and trace devices; and other sophisticated practices for surfacing and interdicting crime.
3. Exclusive Jurisdiction. For purposes of this instruction, exclusive jurisdiction refers to those investigative, operational, supporting and administrative matters for which NCIS is the only DON entity authorized to perform that activity for the DON.
4. Fraud against the Government. A category of major criminal offenses characterized by intentional deception designed to unlawfully deprive the United States of something of value or to seek from the United States a benefit, privilege, allowance, or consideration to which a person is not entitled.
5. MDCO. A CI element within a Military Department that is authorized to conduct CI investigations. The MDCOs are Army CI, NCIS, and the Air Force Office of Special Investigations.
6. Other DON Law Enforcement Organizations. USN Master at Arms (MA), USMC Police, and USMC Criminal Investigation Division.
7. Primary Jurisdiction. For purposes of this instruction, primary jurisdiction refers to those investigative, operational or supporting activities for which NCIS is designated the lead agency.
8. Purely Military Offense. An act constituting a criminal offense under the Uniform Code of Military Justice (UCMJ),

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unique in that it is not otherwise punishable under Federal or state law due to the status of the alleged offender as a uniformed member of the armed forces, to include, but not limited to, desertion, unauthorized absence, and fraternization.

9. Serious Criminal Offense (sometimes referred to as a major criminal offense or felonies). Any criminal offense punishable under the UCMJ, or similarly framed Federal, state, local, or foreign statute, by confinement for a term of more than one year.

10. Threat Warning and Analysis. All actions taken to provide early indications and warning of terrorist, foreign intelligence, criminal, security, and cyber threats, to include analysis, production, and dissemination, in an effort to prevent, mitigate, or warn DON or Department of Defense (DoD) forces of possible hostile or threatening activities.

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MISSIONS AND FUNCTIONS

1. NCIS is a civilian Federal law enforcement agency that protects and defends the DON against terrorism, foreign intelligence threats, and major criminal offenses; assists commands in maintaining good order and discipline; and provides law enforcement and CI services to the USN and USMC on a global basis. NCIS civilian special agents have investigative responsibility for all crimes punishable under the UCMJ by confinement of more than one year, and significant criminal investigations under the criminal laws of the United States when DON equities are involved.

2. Criminal Investigations and Related Activities

a. NCIS will initiate, conduct, and direct independent criminal investigations and associated operations and activities regardless of command authorization.

b. NCIS has primary jurisdiction for the investigation of fraud offenses within the DON not otherwise specified in sections 1 and 3 of enclosure (3) of reference (o), pursuant to references (c) and (aa).

c. NCIS has exclusive authority within the DON to intercept wire, electronic, and oral communications, and to install or use pen register and trap and trace devices for law enforcement purposes pursuant to reference (y). The Director may delegate approval authority to NCIS senior executives responsible for criminal investigations for the intercept of wire, electronic, and oral communications, and the installation or use of pen register and trap and trace devices for law enforcement purposes.

d. Serious Crimes Within the DON. NCIS has primary responsibility for investigating actual, suspected, and alleged major criminal offenses to include:

(1) Non-Combat Deaths. Any non-combat deaths on or off DON installations, facilities, vessels, or aircraft, when the cause of death cannot be medically attributable to disease or natural causes, or until criminal causality can be reasonably excluded. For non-combat deaths that occur off-base or outside of the primary investigative jurisdiction of NCIS, NCIS will be

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the DON lead agency for coordination and/or investigative support to the investigative lead agency. If a non-DON agency with primary jurisdiction declines to investigate, NCIS will assume investigative jurisdiction.

(2) Fires or Explosions. Fires or explosions of unknown origin affecting DON property or property under DON control.

(3) Loss or Theft. Incidents involving the loss or theft of weapons, ordnance, narcotics, dangerous drugs, controlled substances, or high-value property.

(4) Foul Play. Missing command members when foul play cannot be ruled out pursuant to references (b), (c), (d), (n), (p), (af), and (aw).

(5) Criminal Operations. NCIS has primary jurisdiction to conduct criminal operations as defined in enclosure (3). Other DON law enforcement organizations may conduct law enforcement operations within their purview; however, they must first coordinate with NCIS for deconfliction purposes.

(6) Victim and Witness Assistance Program (VWAP). The Director will ensure that all NCIS law enforcement and criminal investigative personnel comply with applicable VWAP requirements pursuant to reference (ax).

(7) Sex Offender Notification. NCIS will, upon receipt of DD Form 2791 or successor document, via the Department of Justice (DOJ) Sex Offender Registration and Notification Act portal, ensure required information for military offenders requiring sex offender registration is updated as detailed in reference (ay).

(8) As law enforcement officials and as agents of a DoD health oversight agency, special agents are authorized to make written investigative demands for medical records in accordance with the requirements of Sections C7.4 and C7.6.1.2.3. of reference (u).

(9) Other DON Law Enforcement Organizations. USN and USMC maintain organic law enforcement and investigative capabilities. Use of other DON law enforcement personnel for law enforcement and security investigations will be limited to

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offenses punishable by less than one year of confinement or cases that NCIS has declined to investigate. NCIS may enter into agreements with other DON Law Enforcement Organizations regarding investigations into offenses meeting the definition of a significant criminal offense. These agreements; however, will not prevent NCIS from assuming jurisdiction in the investigation of any offense.

(10) NCIS may seek to have agents from the USMC Criminal Investigation Division assigned to NCIS for duty as special agents, as well as USN MA personnel assigned to NCIS to support investigative activities. Marine special agents and USN MA personnel so assigned will carry NCIS credentials, conduct criminal investigations under the authority of NCIS, and fall under the operational control of NCIS. While assigned duties with NCIS, Marine special agents and USN MA personnel may be authorized to undertake official duties in a manner that disassociates them from identification as a military member. Pursuant to reference (r), USMC special agents and USN MA personnel may not exercise the arrest authorities extended to NCIS civilian special agents pursuant to reference (l).

(11) Law Enforcement Communications and Databases

(a) NCIS will appoint a Criminal Justice Information Services (CJIS) Systems Officer. Pursuant to reference (cc) and CJIS Security Policy, the Chief Security Officer (CSO) will be the primary authority for Criminal Justice Information in the DON including, but not limited to, compliance with Interstate Identification Index guidelines pursuant to reference (cc) and Identity Matching Engine for Security and Analysis pursuant to reference (cg). The CSO role itself may not be outsourced. However, the CSO may delegate certain responsibilities to other DON agencies.

(b) NCIS is authorized to leverage all lawful and appropriate tools, techniques, technologies, networks, and applications necessary to conduct its mission and protect sensitive data. NCIS will control and manage access to and use of CJIS data and systems to include the National Crime Information Center; III; Integrated Automated Fingerprint Imaging System/Next Generation Identification; National Instant Criminal Background Check System; NCIS Biometrics Information; National Law Enforcement Telecommunications System; Law

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Enforcement-Wide Area Network for DON law enforcement agencies of which NCIS is the CJIS Systems Agency and retains the FBI CJIS Systems User Agreement; and National Data Exchange (N-DEx) Agreement; the Law Enforcement Information Exchange (LInX); the Department of Defense Law Enforcement Defense Data Exchange (D-DEx) Agreement; as well as similar law enforcement databases or systems pursuant to reference (cc).

(c) NCIS is directed by the DoD to administer the D-DEx as its Program Management Office, reference (cc) pertains. NCIS is directed by SECNAV to administer and maintain the LInX on behalf of partner agencies by this instruction and as the primary means to comply in an automated fashion with references (am), (aq), and (cc), especially with regard to the "prompt transfer of information" provisions. D-DEx is the authorized means by which DoD Law Enforcement agencies share information with other federal, state, local, tribal, and territorial law enforcement agencies. D-DEx/LInX interact with the FBI's N-DEX and its other partner agencies.

3. Fraud Investigations and Related Activities

a. NCIS has primary jurisdiction for investigating all allegations of fraud within the DON not otherwise specified in sections 1 and 3 of enclosure (3) of reference (o), and in accordance with references (y) and (aa). The policies, procedures, and responsibilities for determining which DOJ or DoD criminal investigative organization will conduct the investigation of these offenses under applicable law is set forth in references (x) and (as).

b. The Assistant General Counsel (Acquisition Integrity) (AGC (AI)) is responsible for managing, directing, and coordinating acquisition fraud matters throughout the DON. NCIS will support these efforts and forward matters under AGC (AI) cognizance to that office for action, in accordance with reference (aa).

4. PSO

a. NCIS is the executive agent for all PSO matters within the DON pursuant to references (af) and (ag).

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b. NCIS will have exclusive jurisdiction and authority to conduct and coordinate PSO to protect individuals who occupy DON High-Risk Personnel (HRP) positions and other designated individuals, except as otherwise authorized by a combatant commander in a Joint Operating Area. NCIS will:

(1) Participate in the review and validation of DON HRPs as subject matter experts.

(2) Conduct personal security vulnerability assessments for designated DON HRPs to determine the level of risk and vulnerability to terrorist or criminal activities, and to determine the appropriate level of protection.

(3) Have primary jurisdiction within the DON for support to the United States Secret Service and to DoD and non-DoD agencies conducting PSO for United States Government and foreign officials in accordance with reference (m).

(4) Act as the focal point for the DON Program regarding the approval and placement of Non-Tactical Armored Vehicles based upon local threat assessments in coordination with NAVFAC.

5. Security Training Assistance and Assessment Teams (STAAT)

a. NCIS will employ STAAT to conduct assessments, antiterrorism activities, and law enforcement and security training to support fleet, regional USN operational commanders and USMC area and component commanders by providing vulnerability assessments, training, and assistance in meeting strategic objectives of the unified or component commanders.

b. To ensure USN detector military working dogs maintain the highest standards of operational readiness in the war against terrorism, STAAT will conduct assessments every two years to ensure USN programs are in compliance with reference (bt). Commands that are on 18-month tours or less will be inspected annually.

c. Although STAAT's primary support is to fleet law enforcement, security programs and assets, additional support may be provided to shore installations and other selected non-DON law enforcement organizations and foreign security services as requested by combatant commands and directed by NCIS.

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STAAT will employ standardized procedures and techniques in carrying out its mission.

6. Biometrics. NCIS will conduct identity activities, biometrics collections, and associated intelligence analysis in support of the DON and DoD. NCIS will work with CMC and the CNO to develop partnerships, share lessons learned, set standards for analyses, and streamline processes across the DON for biometrics collections pursuant to reference (cb).

7. Counterintelligence (CI). As the DON lead agency for CI, NCIS will conduct the full range of CI and counterterrorism activities to identify and neutralize Foreign Intelligence Entity (FIE) targeting and exploitation of DON personnel, facilities, operations, and other resources pursuant to references (b), (d), (p), (az), and (ba).

a. NCIS has exclusive investigative jurisdiction into actual, potential, or suspected acts of espionage, terrorism, sabotage, and assassination; and actual, suspected, or attempted defection by DON personnel.

b. The Director will ensure the UNSECNAV, DUSN, GC, Naval Inspector General (NAVINSGEN), Deputy Naval Inspector General for Marine Corps (DNIGMC), and members of the Senior Review Board, are kept fully and currently informed of significant and/or sensitive DON CI activities, questionable intelligence activities, and related activities pursuant to references (p) and (bd).

c. The Director is the principal advisor to the DON Secretariat for CI and criminal matters and will advise on significant CI and criminal matters affecting the DON in a timely manner pursuant to references (b), (p), and (bd).

d. NCIS is the CI coordinating authority for all CI activities conducted within the DON pursuant to reference (p).

e. NCIS Staff CI Officers are dual-hatted as Assistant DON CI Coordination Authorities (A/CICA) representing the DON CICA pursuant to reference (p). NCIS Field Office Assistant Special Agents in Charge for CI or other senior NCIS special agents may be designated DON A/CICAs as appropriate.

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f. Any request by a non-DON organization to conduct or support a CI investigation or operation, or for operational use of DON personnel, facilities or resources under SECNAV authority, will be coordinated with NCIS prior to approval pursuant to references (b), (n), (p), and (ar).

g. NCIS is the only DON organization authorized to conduct CI investigations and is the DON lead agency for OFCO. Appropriately trained USN and USMC personnel may conduct OFCO with NCIS in accordance with references (p) and (cj).

h. In consultation with USN, USMC and UNSECNAV, NCIS will represent DON interests in national forums and pertinent CI and law enforcement groups where there is only one DON voting member or representative permitted pursuant to references (b), (p), and this instruction. Advance consultation with UNSECNAV is not required for representation in recurring expert working groups, functional management groups, boards, and associated forums unless representation is at the UNSECNAV or above level. NCIS will ensure UNSECNAV, USN and USMC are apprised of relevant information pertaining to these groups.

i. NCIS is the DON central repository for collecting, processing, storing, and disseminating CI information regarding United States persons pursuant to references (p), (bf), (bg), and (bh).

j. NCIS will provide CI support to the USN and USMC for United States-International Atomic Energy Agency Integrated Safeguards Agreements pursuant to reference (bi); and Chemical Weapons Convention challenge inspections pursuant to reference (bj).

k. NCIS will develop CI awareness and reporting briefings pursuant to references (p) and (t).

(1) All CI incidents and reporting, including all reporting of contacts, activities, indicators and behaviors identified in enclosure (4) of reference (t), must be immediately reported to NCIS pursuant to references (n), (p), (t), (ao), and (bk).

(a) If NCIS accepts a matter for investigation, the reporting entity must terminate any inquiry into the reported

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activities, but may provide assistance to NCIS if requested. If NCIS declines to open an investigation, a CI inquiry may be conducted.

(b) Commands may proceed with a CI inquiry after coordination with NCIS, unless the responsible NCIS Supervisory Special Agent requests that command actions be held in abeyance to preserve evidence for a criminal, CI, or counterterrorism investigation. NCIS will notify commanders of a decision to initiate an investigation not more than 14 days after receipt of the information from the command.

(2) If at any time during the conduct of a CI inquiry, information is developed that establishes a reasonable belief an individual or individuals have established a clandestine relationship with a FIE or an agent of a FIE, the matter must immediately be referred to NCIS.

(3) NCIS will ensure USN and USMC component commanders are apprised of NCIS CI activities affecting their respective commands pursuant to reference (p) unless specific circumstances dictate otherwise.

(4) NCIS will provide CI support to USN, USMC, and other DON commands, commanders, installations, facilities, personnel, operations, and activities pursuant to references (b), (p), and this instruction.

(5) NCIS will provide support to other DoD components and Non-DoD Federal departments or agencies as directed, to include designated Force Protection Detachments (FPD), Joint Terrorism Task Forces, Joint Intelligence Task Forces, and Defense Critical Infrastructure Protection (DCIP) sector leads pursuant to references (d), (ae), (an), and (bl).

(6) NCIS will support the DoD Personnel Security Program pursuant to reference (bm).

(7) NCIS may seek to have personnel from the USN or USMC assigned to NCIS for duty as investigators or operational representatives. USN and USMC personnel assigned to NCIS as investigators or operational representatives must carry NCIS credentials and badges as appropriate to assist in the conduct of CI investigations and operations under the authority and the

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operational control of NCIS. While assigned duties with NCIS, USN and USMC investigators and operational representatives may be authorized to undertake official duties in a manner that disassociates them from identification as a military member. Pursuant to reference (r), USN and USMC personnel assigned to NCIS as investigators or operational representatives may not exercise the arrest authorities extended to NCIS civilian special agents pursuant to reference (l).

8. Research, Development, and Acquisitions (RDA)

a. NCIS is the lead agency and has primary jurisdiction for CI support to DON RDA and critical technology protection. NCIS will support RDA by conducting CI activities that protect Critical Program Information (CPI), technologies, or systems. The focus of this support will be in accordance with references (d), (n), (p), (ab), (ac), and (ad).

b. Supported commands must identify and provide validated CPI to enable NCIS to conduct tailored threat analysis to support security countermeasures pursuant to references (ab), (ad), (bq), (br), and (ce).

c. Commanding officers, program managers, and technical directors responsible for executing program protection plans will incorporate NCIS or NCIS-coordinated CI Support Plans when configuring plans for risk mitigation and threat countermeasures pursuant to references (d), (n), (p), (ab), (ad), and (az).

9. Defense Critical Infrastructure Protection (DCIP). NCIS is the DON lead agency for CI support to DCIP. NCIS will:

a. Serve on the DON CIP Program Council and DON CIP Program Working Group.

b. Partner with the Office of Naval Intelligence and DIRINT, and in coordination with DUSN and the DON SAPCO, develop an I&W capability for threats to critical infrastructures and assets.

c. Provide DCIP-focused CI protection to the DON.

d. Provide comprehensive and timely reporting of FIE threats, incidents, events, and trends to DoD and DON DCIP

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authorities, DoD Components, and the defense sector lead organizations where the asset owner is the DON or a DoD-affiliated organization tasked to NCIS for CI support pursuant to references (d), (ae), (bg), and (bl).

e. NCIS will investigate fraud and other major criminal offenses involving these programs.

10. Insider Threat

a. The Director is a principal member of the DON Insider Threat Program Senior Executive Board pursuant to reference (bk).

b. NCIS will provide CI and law enforcement experienced representatives to ITP-chartered working groups pursuant to reference (bk).

c. NCIS will conduct CI activities to detect, identify, assess, exploit, and deny FIE and the insider threat in accordance with references (n), (t), (w), (ad), (bk), and (bs).

d. NCIS will provide CI insider threat awareness and reporting training in accordance with references (t), (ad), and (bk), and receive CI and law enforcement referrals from the DON ITP for further analysis and appropriate response.

11. Port Visit Support

a. NCIS will provide threat assessments in accordance with reference (bu).

b. NCIS will provide in-person support for:

(1) USN/USNS port visits to all foreign ports with a SIGNIFICANT to HIGH terrorism threat level per the Defense Intelligence Agency (DIA) assessed threat.

(2) USN/USNS ships transiting through foreign ports with a HIGH to CRITICAL FIE or criminal threat and ports deemed MEDIUM level of threat per DIA's assessed threat, contingent on availability of resources.

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(3) Ships that have special missions and/or cargo.

c. NCIS may provide virtual (remote) support when the port is a United States port, a controlled foreign port, or a major North Atlantic Treaty Organization partner.

12. Special Access Programs (SAP). NCIS will assign appropriately cleared and qualified personnel to provide support to SAPs pursuant to references (c), (n), (o), (ad), and (cd).

13. Technical Surveillance Countermeasures (TSCM)

a. NCIS shall designate a DON TSCM program coordinator to act as the DON Senior Agency Official for TSCM and ensure TSCM activities are properly coordinated with the other elements of the DON CI program pursuant to references (aj) and (ak), and to ensure that all DON TSCM programs are in compliance with policy and direction of references (l) through (r). In addition, NCIS shall appoint a NCIS TSCM Program Manager, or an individual, to assume the responsibilities for USN assets and equities.

b. TSCM activities will include support to DON critical information and infrastructure protection; technical security assurance; RDA; insider threat; SAP; PSO; FPD; JTTF; and appropriate cleared defense contractors.

c. TSCM staff will be granted unfettered physical and logical access to all Information Technology networks and telephone systems within facilities or commands to include all areas that house network infrastructure and cable runs during the conduct of a TSCM inspection pursuant to references (aj) and (ak).

d. The NCIS TSCM manager is responsible for providing technical direction and centralized oversight of all NCIS TSCM assets and their utilization. NCIS TSCM activities will be primarily directed towards USN and NCIS requirements.

14. Polygraph

a. NCIS is the only DON organization authorized to conduct polygraph examinations within the DON pursuant to references (ah) and (ai).

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b. The Director or his delegatee, must approve all DON polygraph examinations.

c. The Director or his delegatee, is the sole authority for certifying examiners as qualified and competent to conduct polygraph examinations on behalf of the DON pursuant to references (ah) and (ai).

15. Cyber Activities

a. NCIS will conduct or facilitate all felony-level law enforcement investigations, operations and analysis of criminal related cyber incidents targeting or involving DON assets and/or personnel. NCIS has exclusive jurisdiction within the DON to conduct CI and terrorism investigations of cyber incidents targeting or involving DON assets, personnel, and installations; and will disseminate this information to other DON, DoD, and national agencies as appropriate. NCIS will execute proactive operations in cyberspace targeting threats to the DON and related defense industrial base assets. Examples of applicable guidance include references (b), (c), (d), (l), (p), (n), (s), (w), (af), (al), (bc), (bn), and (bo).

b. NCIS will train and maintain a staff skilled in:

(1) Investigation of computer crimes and the evaluation of the FIE threats to command and control and information operations.

(2) The tactics, techniques, and procedures associated with criminal and FIE activities directed at DON personnel, technology, assets, and installations via cyberspace, to include expertise in digital forensics and technical support to operations, investigations, and analysis pursuant to references (b), (c), (p), (ab), (bn), and (bo).

16. Information Sharing, Threat Warning, Collections, and Analysis

a. NCIS will maintain, direct, and operate a 24 hour-a-day, 7 day-a-week MTAC to continually monitor national, service, theater, and other intelligence and law enforcement information to identify threats to DON assets, operations, and activities. The NCIS MTAC will:

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(1) Be the DON terrorism watch center; serve as the DoD Global Watch for FBI counterterrorism threat information pursuant to reference (al); and function as the DON fusion center for law enforcement, intelligence, CI, and other threat information required to defeat terrorist, foreign intelligence, criminal, and related threats to DON personnel, installations, facilities, vessels, and aircraft.

(2) Promptly notify affected commands of any investigative or CI information indicating an actual or suspected threat to DON operations, personnel, facilities or other assets, or any occurrence which warrants the attention of fleet, component or combatant commanders, or the DoD/DON leadership.

(3) Provide CI collection management, analysis, and production support to the DON and its components pursuant to reference (p); and support investigations and operations.

(4) Issue threat reports, special analyses, intelligence assessments, advisories, and summaries to notify DON components of potential threats.

b. The NCIS MTAC will be the initial DoD point of contact pursuant to reference (cg).

c. NCIS will maintain an analytic capability to provide indications and warning of terrorist, foreign intelligence, cyber, and criminal threats to the DON and supported DoD components, and to generate related analysis and production on matters of interest to the DON pursuant to references (b), (d), (p), (ab), (ac), (al), (an), and (bn).

d. NCIS will publish annual assessments of the foreign intelligence and terrorism threat to the DON pursuant to references (bp) and (bu).

17. Undercover Officers, Agents, Informants, and Sources

a. Operations Security and safety concerns require identity protections for undercover officers, agents, confidential informants, and sources assisting NCIS in the execution of its criminal investigative, CI, and counterterrorism missions.

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b. DON Commanders and Directors will facilitate NCIS use of DON personnel as confidential informants, cooperating witnesses, or in undercover roles in investigations and operations targeting criminal activities.

(1) Pursuant to references (c), (cm), and (cn), NCIS may use active duty military personnel as cooperating witnesses and confidential informants in support of criminal and CI investigations. NCIS will coordinate the use of active duty military personnel with the appropriate military commander or director except in circumstances where doing so would result in threats to the safety of the cooperating witness or confidential informant, or would reasonably be expected to jeopardize the operational security of the investigation or operation. Once the threat has been mitigated, NCIS will brief the appropriate commander or director.

(2) Use of military personnel for CI operational purposes will be coordinated and approved by the commander having command and control of the personnel and the ACMC or VCNO as applicable in accordance with reference (ar). If the individual's military commander is thought to be conflicted, approval will be raised to a senior authority or appropriate higher command.

(3) NCIS use of DON civilian, and contractor personnel does not require approval from within the member's chain of command.

(4) NCIS will not release the identity of a cooperating witness, confidential informant or source outside of NCIS without the individual's written consent, except in accordance with references (ar), (as), (au), and (av).

(5) NCIS investigative reports will conceal the identities of sources; release of identities requires either concurrence of the responsible NCIS Special Agent in Charge; or an order from a military judge in accordance with references (ar), (as), (au), and (av).

(6) United States Government personnel, regardless of rank or position, who have or have had access to classified information that identifies a covert agent whose identity is being protected by affirmative measures will not disclose any

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information identifying a covert agent to any individual not authorized to receive classified information pursuant to reference (av).

18. Arrest Authority

a. Reference (as) authorizes NCIS special agents and investigators to apprehend persons subject to the UCMJ.

b. NCIS civilian special agents are authorized to execute and serve any warrant or other process issued under the authority of the United States and to make any arrest without a warrant in accordance with reference (l).

c. NCIS civilian special agents are authorized to make arrests of civilians accompanying the Armed Forces outside the United States who have committed a covered criminal offense pursuant to references (bx) and (by).

19. Liaison. Within the DON, NCIS has exclusive responsibility for liaison with federal, state, local, and foreign law enforcement, security and intelligence agencies on all criminal investigative, CI, counterterrorism, and security matters assigned to NCIS by this instruction and its references. Commands may pursue interaction with federal, state, local, and foreign law enforcement, security, and intelligence agencies on antiterrorism matters, but shall do so in coordination with NCIS. Execution of this responsibility shall not limit any of the following:

a. Contact between USN and USMC judge advocates and federal, state or local officials to determine prosecutorial jurisdiction and grants of immunity, coordinate pretrial agreements, or take any other action consistent with the duties of judge advocates.

b. Interaction between commands and federal, state, local, or foreign law enforcement and security officials on routine matters involving physical security, offenses NCIS declines to investigate, purely military offenses, traffic matters, and training.

c. Liaison conducted by USN and USMC CI elements in accordance with reference (p).

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20. Office of Military Support (OMS)

a. NCIS will be supported by OMS. OMS will coordinate and provide administrative and mission support to NCIS through the integration of active and reserve USN personnel to perform duties as military investigators, operational representatives, protective Service Members, intelligence analysts, and other support personnel.

b. The Commanding Officer, OMS, maintains administrative control of all USN personnel assigned to NCIS including personnel detailed to specific NCIS codes or field offices to support operational missions.

21. Dissemination and Retention of Reports of Investigation. NCIS will ensure all files created under the provisions of this instruction are retained and disposed of pursuant to reference (bz). Only the Director or his designee, may authorize the modification or destruction of any such file.

22. NCIS Resource Sponsors

a. NCIS is aligned with Budget Submitting Office 12 under the Office of the Assistant Secretary of the Navy (Financial Management and Comptroller), through the Financial Management and Budget, for all financial and budget activities related to security and investigative activities.

b. NCIS is aligned with N2N6 (Finance) to submit NCIS program requirements for Military Intelligence Program and General Defense Intelligence Program funding.

23. Relationships with the FBI and the Central Intelligence Agency (CIA). Joint criminal investigations and CI activities within the United States conducted with the FBI are governed by Memorandums of Agreement or Understanding between the DOJ and the DoD pursuant to reference (al). Certain CI activities overseas are conducted in coordination with the CIA pursuant to references (bv) and (co). These documents describe NCIS' exclusive responsibility within the DON for coordinating and conducting the activities conducted therein.

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OTHER COMMANDS AND ORGANIZATIONS RELATIONSHIP WITH NCIS

1. DON Commands, Activities, and Personnel must:

a. Not impede the use of investigative tools, techniques, and technologies deemed necessary and permissible under law or regulation as determined by NCIS and the NCIS legal staff.

b. Ensure NCIS personnel displaying special agent credentials are granted full access to USN and USMC installations, commands, ships, and other naval facilities.

(1) NCIS special agents who identify themselves using NCIS special agent credentials are exempt from all routine searches of their persons, possessions, and materials including their vehicles and occupants therein.

(2) Individuals escorted by an NCIS special agent will not be required to display identification.

c. Ensure DON personnel who report acts or omissions to NCIS they reasonably believe to be violations of law or regulation, or to constitute fraud, waste, or mismanagement will be free from reprisal and retaliation. No adverse action may be taken against any individual who reports, provides testimony, or otherwise participates in or assists NCIS with an investigation or proceeding pursuant to references (v) and (cf).

d. Ensure NCIS special agents are granted access to installations, facilities, spaces, information, or material classified up to top secret in the performance of their official duties.

e. Comply with requests by an NCIS special agent for information or assistance pursuant to an NCIS investigation or operation, as lawful, mandated, and as if made by the Secretary. This includes:

(1) Access to installations, information and records, and ensuring that NCIS information regarding investigations, operations, and related activities is not compromised by command personnel and, to the extent possible, is limited to senior command personnel.

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(2) Access to all types of command files, personnel records, medical records, training records, contract and procurement documents, and computer files and records.

(3) Written investigative demands by NCIS special agents as law enforcement officials and as agents of a health oversight agency, for medical records in accordance with the requirements of Sections C7.4 and C7.6.1.2.3. of reference (u).

(4) Access to Naval Safety Center records pursuant to reference (ci).

(5) Coordinate with the appropriate Cognizant Authority to provide access to Sensitive Compartmented Information (SCI) and SAPs or similarly controlled information, spaces, or material to allow NCIS personnel who have requested such access in advance as part of an authorized investigative or CI matter, and who have been verified as holding the appropriate level security clearance and are indoctrinated for access to SCI or the SAP in question in accordance with reference (cd) and other applicable policies. Prior verification will be waived in exigent circumstances involving the protection of life or preservation of evidence; however, such verification will be accomplished as soon as practicable. Where the requirement for prior verification has been waived, NCIS will notify DON SAPCO (for SAP) and/or DNI/DIRINT (for SCI) immediately.

(6) Provide required logistical and communications support, within the limits of other operational commitments, when NCIS personnel are deployed with any naval unit.

(7) Refer to NCIS any incidents of actual, suspected, or alleged major criminal offenses regardless of whether they occur on or off an installation or ship or are being investigated by other authorities. In those rare instances when immediate response by NCIS is not feasible, such as a submarine on patrol, commanding officers will conduct such preliminary investigations as circumstances dictate, preparatory to a full investigation by NCIS. In such instances, appropriate measures must be taken to ensure the preservation and accounting of possible evidence and to avoid any action that might prejudice investigative possibilities or impair the judicial process. This referral does not prevent the notification to the service law enforcement elements.

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(8) Immediately refer to NCIS all instances of suspicious activities or anomalies, contacts, activities, indicators, and behaviors that might indicate potential FIE involvement or threats against the DoD or the DON, its personnel, information, materiel, facilities, and activities; or against United States national security. If reporting is made to an organizational CI element, that element will immediately coordinate with the nearest NCIS office. Failure to adhere to references (n) and (t), if warranted, could result in administrative or legal action. This referral does not prevent the notification to the service Law enforcement and/or CI elements.

(a) Referrals must be made prior to any substantive investigative steps by the command, to include the interview of suspects and searches where individuals have an expectation of privacy.

(b) Organizations will not delay the initiation of a CI inquiry for any inappropriate purpose, including attempts to delay the initiation to allow the use of otherwise prohibited security or inquiry techniques pursuant to reference (ao).

(c) The requirement for immediate referral will not preclude efforts by first responders to safeguard personnel, secure crime scenes, or take other emergency responses in exigent circumstances.

2. Coordination of CI Activities with the FBI

a. DON commands, commanders, organizational heads, and other individuals, must report to the FBI through NCIS any information, regardless of origin, which indicates that classified information is being, or may have been, disclosed in an unauthorized manner to a FIE or an agent of an FIE pursuant to references (n), (p), (al), (ao), and (bb).

b. Following a report, if the FBI requests investigative or operational support, NCIS will represent the DON interest pursuant to references (n), (p), (al), (ao), and (bb).

3. Investigations

a. Investigations initiated by NCIS have primacy over collateral investigations conducted by commanders, safety investigators, and other organizational entities. Collateral investigations will not interfere or otherwise hinder NCIS investigations. Specific guidance on the relationship between criminal investigations and safety investigations is contained in reference (ci).

b. Investigations conducted by commands under reference (ba) will not compromise or otherwise impede any NCIS investigation. If, during the conduct of an NCIS investigation, a commanding officer deems it necessary to proceed with an investigation, that decision must first be coordinated with NCIS. If NCIS objects to the initiation of an investigation, it will be suspended and the matter referred for resolution to the first officer exercising general court-martial convening authority.

c. NCIS will, on a reciprocal basis, support Federal, state, local or foreign law enforcement, security, or intelligence agencies in lawful actions pursuant to reference (aq). This reciprocal support may include automated or person to person sharing of information and assisting and/or facilitating fellow law enforcement agencies in the surveillance, detention, apprehension, and/or arrest of suspected violators of the law including those with active arrest warrants and those armed forces members in a deserter status to the maximum extent prudent and permitted by law and regulation.

d. Any commander, commanding officer, or other appropriate command authority with the USN and USMC may request that NCIS conduct an investigation. NCIS may, at its discretion, decline to undertake the investigation. In such event, NCIS will expeditiously inform the affected command or activity pursuant to references (b), (c), (d), (n), and (o).

e. The NAVINSGEN and DNIGMC may request investigative assistance in writing from the Director on a priority basis; both organizations will, to the extent possible, exchange with the Director the results of investigative activity when such information impacts the mission and functions of the other; and

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will report any disagreement regarding the sharing of information or the conduct of a particular investigation to the SECNAV for resolution.

f. Objections to NCIS investigations or requests to delay, suspend, or terminate NCIS investigations will be administered under the procedures of references (c) and (n).

g. NCIS will provide to each command, prosecutorial authority, or other appropriate activity a full report of investigation regarding any offenses or incidents investigated that affect that entity unless specific circumstances dictate otherwise.

h. NCIS will maintain a record of disposition of command disciplinary actions or the actions of civilian judicial authorities in investigative reports opened by NCIS. The record will include the results of courts-martial, non-judicial punishments, and actions by civilian criminal or civil proceedings, as applicable.

4. Relationships with other United States Government Organizations

a. FBI

(1) Joint criminal investigations and CI activities within the United States conducted with the FBI are governed by references (x) and (al).

(2) Although the FBI has primary law enforcement responsibility for terrorist incidents in the United States (including the District of Columbia, the Commonwealth of Puerto Rico, possessions, and territories), installation commanders retain responsibility for the maintenance of law and order on military installations. Contingency plans will address the use of security forces to isolate, contain, and neutralize a terrorist incident within the capability of installation resources. Notification and response of the FBI will be coordinated through the local NCIS office.

b. CIA. Certain CI activities overseas are conducted in coordination with the CIA pursuant to references (bv) and (bw).

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NCIS BOARD OF ADVISORS

1. To assist SECNAV in providing DON corporate governance and in aligning NCIS resources and requirements across the spectrum of NCIS mission areas to ensure maximum feasible NCIS support for all DON components, the UNSECNAV will, on a regular basis, convene an NCIS Board of Advisors (BOA) which he or she will chair and which will be further comprised of the DON GC; the VCNO; the ACMC; and the Director. The BOA has no supervisory or operational authority over NCIS.

2. The NCIS BOA will:

- a. Review and validate NCIS Strategic Plans.
- b. Identify, validate, and prioritize requirements relating to core NCIS mission areas of investigating major criminal offenses (felonies), CI, combating terrorism, law enforcement, and security.
- c. Assess the adequacy of NCIS resources and coordinate their allocation, as required, to respond to changing threats and mission demands.
- d. Address, as necessary, NCIS requirements that exceed core mission response capabilities, including issues associated with special means to support sensitive NCIS operations.
- e. Ensure that necessary mechanisms are in place to support the BOA in its assessment of NCIS requirements and capabilities and in addressing NCIS resources and mission issues.
- f. Assess the effectiveness of NCIS' linkage and coordination with other DoD, DON, and Federal law enforcement, intelligence, and investigative entities.
- g. Review and evaluate such other areas as the BOA may determine.

APPENDIX C

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SECNAVINST 5820.7C
N3/N5
26 January 2006

SECNAV INSTRUCTION 5820.7C

From: Secretary of the Navy

Subj: COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS

Ref: (a) DoD Directive 5525.5 of 15 Jan 86
(b) DoD Directive 3025.12 of 4 Feb 94
(c) Title 10, U.S. Code, Sections 371-382
(d) SECNAVINST 5211.5D
(e) DoD 4515.13-R, Air Transportation Eligibility, of Nov 94
(f) SECNAVINST 5430.107
(g) SECNAVINST 3820.3E
(h) Title 18, U.S. Code, Section 1385
(i) CJCSI 3121.01B

1. Purpose. This instruction implements reference (a) and Department of the Navy (DON) policy, responsibilities, and procedures for the transfer of relevant information, and the provision of equipment, facilities and personnel to Federal, State, and local civilian law enforcement officials. This instruction has been administratively revised and should be reviewed in its entirety.

2. Cancellation. SECNAVINST 5820.7B.

3. Scope. This instruction applies to all DON commands and activities. This instruction does not apply to cooperation with foreign officials (which follows the guidance of applicable international agreements and the administrative and operational chain of command). Use of DON personnel in civil disturbances and related matters is addressed by reference (b). Assistance to the government of the District of Columbia is addressed by separate Department of Defense (DoD) guidance.

4. Policy. It is DON policy to cooperate with civilian law enforcement officials (employees with the responsibility for enforcement of the laws within the jurisdiction of U.S. Federal, State, or local governmental agency) to the extent practical. The implementation of this policy shall be consistent with the needs of national security and military preparedness, the historic tradition of limiting direct military involvement in

civilian law enforcement activities, and applicable law. Assistance provided under this instruction shall be at the lowest cost practicable. Assistance may not be provided under this instruction if such assistance could adversely affect national security or military preparedness.

5. Procedures for Prompt Transfer of Relevant Information

a. In accordance with reference (c), DON commands and activities are encouraged to provide Federal, State, or local civilian law enforcement officials any information collected during the normal course of military operations that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials. In the event that a system of records maintained by DON to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature arising by general statute (or by rule, regulation, or order issued pursuant to the statute), the relevant records in the system of records may be referred, as a routine use under reference (d), to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute (or rule, regulation, or order issued pursuant to it). An exception may be made when information is acquired and disseminated to a civilian agency through separate channels established and approved by the Chief of Naval Operations, the Commandant of the Marine Corps, Director, Naval Criminal Investigative Service, or higher authority.

b. The planning, scheduling, and execution of compatible military training or operations may take into account the needs of civilian law enforcement officials when the collection of information is an incidental aspect of training performed for a military purpose. This does not permit the planning, scheduling or execution of military training or operations for the primary purpose of aiding civilian law enforcement officials, or the purpose of routinely collecting information about U.S. citizens. Local law enforcement agents may accompany routinely scheduled training flights as observers for the purpose of collecting law enforcement information. This provision does not authorize the use of DoD aircraft to provide point-to-point transportation and training flights for civilian law enforcement officials (which may be provided only in accordance with reference (e)).

c. The transfer of such information shall be in accordance with reference (f) (providing Naval Criminal Investigative

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Service exclusive authority for some matters, and primary authority for other matters). Naval commands are authorized to established local contact points with civilian agencies in routine law enforcement matters; commands shall coordinate with the local Naval Criminal Investigative Service Office for other matters.

d. Nothing in this section modifies DON policies or procedures concerning collection or dissemination of information for intelligence purposes under reference (g).

6. Procedures for Request for Equipment, Facilities, Personnel

a. All requests from civilian law enforcement officials for the use of DON equipment, facilities, or personnel under this instruction will be submitted by the requested command via the chain of command to the designated approval authority (unless approval by higher authority is required by statute or DoD guidance). On Marine Corps installations with Provost Marshals, requests shall be coordinated with the Provost Marshal. Requests requiring DoD approval must be forwarded with a recommendation and justification to approve or deny the request. Requests may be communicated by telephone when time and circumstances require immediate action. When forwarding a request, the command will provide all available relevant information concerning:

(1) The ability to provide the assistance requested without adversely affecting national security or military preparedness, and

(2) The incremental costs DON would incur in providing the requested assistance.

b. Approval Authority for Use of Equipment and Facilities:

(1) Requests for the loan or use of equipment or facilities for more than 60 days (including a permanent disposition) or for arms, ammunition, combat vehicles, vessels, and aircraft must be approved by the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)).

(2) All other requests may be approved by any of the following commands (or superiors to these commands): Naval Component and Fleet Commanders; Commanders and Commanding Officers of major Navy shore commands; Commanding Generals of Marine Corps operating forces; Commanders of Marine Corps bases, camps, aviation installations, logistics installations, and unit

training centers; Commanding Generals of Marine Corps Reserve support activities.

c. Approval Authority for Use of Personnel:

(1) The Secretary of Defense, via the Joint Staff (and Assistant Secretary of Defense (Reserve Affairs) for requests involving reserve personnel), is the approval authority for personnel requests that involve assignment of 50 or more DON personnel, or a period of assignment of more than 30 days, or DON intelligence components.

(2) The ASN (M&RA) may approve requests for the following use of DON personnel, except as provided above, in accordance with reference (a):

(a) To provide training or expert advice;

(b) For equipment maintenance;

(c) To monitor and communicate the movement of air and sea traffic;

(3) The Under Secretary of Defense for Personnel and Readiness, via the Joint Staff (and ASD(RA)) for requests involving reserve personnel) is the approval authority for other requests that involve the assignment of personnel.

d. Delegated Denial Authority: Requests for assistance from civilian law enforcement officials that may be approved at the Secretary of the Navy level or below may be denied by the appropriate Echelon 2 command if appropriate under this instruction.

7. Permissible Forms of Equipment and Facilities Assistance

a. DON activities may make equipment and facilities (base and research) available to Federal, State, or local civilian law enforcement officials for law enforcement purposes when approved as above.

b. Approval authorities shall ensure that assistance provided under this paragraph follows applicable provisions of Title 10, U.S. Code, Sections 372, 2576, 2667, Title 31, U.S. Code, Sections 1535-1536, and other applicable laws and directives (see reference (a)).

8. Permissible and Impermissible Forms of Personnel Assistance

a. DoD policy (reference (a), making the Posse Comitatus Act applicable to the DON) reflects the historic tradition of limiting direct military involvement in civilian law enforcement activities. The Posse Comitatus Act (reference (h)) states:

"Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both."

Pursuant to reference (a), commands must adhere to this paragraph in deciding on the provision of military personnel to civilian law enforcements requests.

b. Restrictions on Direct Assistance: Except as otherwise provided in this instruction, reference (a) prohibits the following forms of direct assistance by military personnel:

(1) Interdiction of a vehicle, vessel, aircraft, or other similar activity.

(2) A search or seizure.

(3) An arrest, apprehension, stop and frisk, or similar activity.

(4) Use of military personnel for surveillance or pursuit of individuals, or as undercover agents, informants, investigators, or interrogators.

(5) With regard to such actions described above that are conducted outside the territorial jurisdiction of the United States, the Secretary of Defense or the Deputy Secretary of Defense will consider for approval, on a case-by-case basis, requests for exceptions to the policy restrictions against direct assistance by military personnel to execute the laws. Such requests for exceptions to policy outside the territorial jurisdiction of the United States should be made only when there are compelling and extraordinary circumstances to justify them.

(6) Further, the Secretary of the Navy may provide exceptions to the limitations contained in this instruction on a case-by-case basis:

(a) Such exceptions shall include requests from the Attorney General for assistance under Title 21, U.S. Code, Section 873(b).

(b) Prior approval from the Secretary of Defense shall be obtained for exceptions that are likely to involve participation by members of the Navy or Marine Corps in an interdiction of a vessel or aircraft, a law enforcement search or seizure, an arrest, apprehension, or other activity that is likely to subject civilians to use of military power that is regulatory, proscriptive, or compulsory. Such approval may be granted only when the head of the civilian agency concerned verifies that:

1. The size or scope of the suspected criminal activity poses a serious threat to the interests of the United States and enforcement of a law within the jurisdiction of the civilian agency would be impaired seriously if the assistance were not provided because civilian assets are not available to perform the missions; or

2. Civilian law enforcement assets are not available to perform the mission and temporary assistance is required on an emergency basis to prevent loss of life or wanton destruction of property.

c. Permissible Direct Assistance. The following activities are permissible:

(1) Primary Purpose Military or Foreign Affairs: Actions that are taken for the primary purpose of furthering a military or foreign affairs function of the United States, regardless of incidental benefits to civilian authorities. This provision must be used with caution, and does not include actions taken for the primary purpose of aiding civilian law enforcement officials or otherwise serving as a subterfuge to avoid the restrictions of the instruction. Actions under this provision may include the following, depending on the nature of the DoD interest and the authority governing the specific action in question:

(a) Investigations and other actions related to enforcement of the Uniform Code of Military Justice (UCMJ).

(b) Investigations and other actions that are likely to result in administrative proceedings by the Department of Defense, regardless of whether there is a related civil or criminal proceeding.

(c) Investigations and other actions related to the commander's inherent authority to maintain law and order on a military installation or facility.

(d) Protection of classified military information or equipment.

(e) Protection of DoD personnel, equipment and official guests.

(f) Such other actions that are undertaken primarily for a military or foreign affairs purpose.

(2) Department of Defense Inspector General (DoD IG): Audits and investigations conducted by, under the direction of, or at the request of the DoD Inspector General. This includes drug investigations conducted by Naval Criminal Investigative Service under DoD IG Criminal Investigations Policy Memorandum Number Five on Criminal Drug Investigative Activities of 1 October 1987.

(3) Preserve Public Order: Actions that are taken under the inherent right of the U.S. Government under the Constitution to ensure the preservation of public order and to carry out governmental operations within its territorial limits, or otherwise in accordance with applicable law, by force, if necessary. This authority is reserved for unusual circumstances, and will be used only under reference (b), which permits use of this power in two circumstances:

(a) The emergency authority authorizes prompt and vigorous Federal action, including use of military forces, to prevent loss of life or wanton destruction of property and to restore governmental functioning and public order when sudden and unexpected civil disturbances, disasters, or calamities seriously endanger life and property and disrupt normal governmental functions to such an extent that duly constituted local authorities are unable to control the situation.

(b) The emergency authority authorizes Federal action, including the use of military forces, to protect Federal property and Federal Government functions when the need for protection exists and duly constituted local authorities are unable or decline to provide adequate protection.

(4) Insurgency: Actions taken pursuant to DoD responsibilities under Title 10, U.S. Code, Sections 331-334 and

reference (b), relating to the use of the military forces with respect to insurgency or domestic violence or conspiracy that hinders the execution of State or Federal law in specified circumstances.

(5) Assistance to Executive Officials. Actions taken under express statutory authority to assist officials in executing the laws, subject to applicable limitations. The laws that permit direct military participation in civilian law enforcement, include, but are not limited to, the following:

(a) Protection of national parks and certain other Federal lands. Title 16, U.S. Code, Sections 23, 78 and 593.

(b) Enforcement of the Fishery Conservation and Management Act of 1976. Title 16, U.S. Code, Section 1861(a).

(c) Assistance in the case of crimes against foreign officials, official guests of the United States, and other internationally protected persons. Title 18, U.S. Code, Sections 112 and 1116.

(d) Assistance in the case of crimes against members of Congress. Title 18, U.S. Code, Section 351.

(e) Assistance in the case of crimes involving nuclear materials. Title 18, U.S. Code, Section 831.

(f) Protection of the President, Vice President, and other designated dignitaries. Title 18, U.S. Code, Section 1751 and the Presidential Protection Assistance Act of 1976.

(g) Actions taken in support of the neutrality laws. Title 22, U.S. Code, Sections 408 and 461-462.

(h) Removal of persons unlawfully present on Indian lands. Title 25, U.S. Code, Section 180.

(i) Execution of quarantine and certain health laws. 42 U.S.C. § 97.

(j) Execution of certain warrants relating to enforcement of specified civil rights laws. 42 U.S.C. § 1989.

(k) Removal of unlawful inclosures from public lands. 43 U.S.C. § 1065.

(l) Protection of the rights of a discoverer of a guano island. Title 48, U.S. Code, Section 1418.

(m) Support of territorial governors if a civil disorder occurs. Title 48, U.S. Code, Sections 1422 and 1591.

(n) Actions in support of certain customs laws. Title 50, U.S. Code, Section 220.

(6) Expert Advice. DON activities may provide expert advice to Federal, State, or local law enforcement officials in accordance with Title 10, U.S. Code, Section 373. This does not permit regular or direct involvement of military personnel in activities that are fundamentally civilian law enforcement operations, except as otherwise authorized in this instruction.

(7) Training. DON activities may provide training to Federal, State, and local civilian law enforcement officials in the operation and maintenance of equipment made available under this instruction. This does not permit large scale or elaborate training, and does not permit regular or direct involvement of military personnel in activities that are fundamentally civilian law enforcement operations, except as otherwise authorized by this instruction. Any such training shall be provided under the following guidance:

(a) It shall be limited to situations when the use of non-DoD personnel would be unfeasible or impractical from a cost or time perspective and would not otherwise compromise national security or military preparedness.

(b) It shall not involve DON personnel in a direct role in law enforcement operations, except as otherwise authorized by law.

(c) The performance of such assistance by DON personnel shall be at a location where there is not a reasonable likelihood of a law enforcement confrontation, except as otherwise authorized by law.

(8) Use of DON Personnel to Operate or Maintain Equipment. The use of DON personnel to operate or maintain or to assist in operating or maintaining equipment shall be limited to situations when the training of non-DoD personnel would be unfeasible or impractical from a cost or time perspective and would not otherwise compromise national security or military preparedness concerns. In general, the head of the civilian law enforcement agency may request DON activities to provide

personnel to operate or maintain or assist in operating or maintaining equipment for the civilian agency. This assistance shall be subject to the following guidance:

(a) It shall not involve DON personnel in a direct role in law enforcement operations, except as provided by this instruction or as otherwise authorized by law.

(b) It shall be at a location where there is not a reasonable likelihood of a law enforcement confrontation, except as otherwise authorized by law.

(c) The use of military aircraft to provide point-to-point transportation and training flights for civilian law enforcement officials may be provided only under reference (c).

(d) Additional provisions concerning drug, customs, immigration, and certain other laws: A request under this provision for DON personnel to operate or maintain or to assist in operating or maintaining equipment made available under this instruction may be made by the head of a civilian agency empowered to enforce the following laws:

1. The Controlled Substances Act (Title 21, U.S. Code, Sections 801 et seq.) or the Controlled Substances Import and Export Act (Title 21, U.S. Code, Sections 951 et seq.);

2. Immigration and Nationality Act (Title 8, U.S. Code, Sections 1324-1328);

3. Law relating to the arrival or departure of merchandise, as defined in the Tariff Act of 1930 (Title 19, U.S. Code, Section 1401), into or out of the customs territory of the United States, as defined in the Tariff Schedules of the United States (Title 19, U.S. Code, Section 1202), or any other territory or possession of the United States;

4. Any other law that establishes authority for DON personnel to provide direct assistance to civilian law enforcement officials.

(e) DON personnel may be assigned to operate or assist in operating equipment to the extent the equipment is used for monitoring and communicating to civilian law enforcement officials the movement of air and sea traffic with respect to any criminal violations specified in paragraph 8(c)(5) of this instruction. This includes communicating

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information concerning the relative position of civilian law enforcement officials and other air and sea traffic.

(f) In an emergency circumstance, equipment operated by or with the assistance of DON personnel may be used outside the land area of the United States (or any commonwealth, territory, or possession of the United States) as a base of operations by Federal law enforcement officials to facilitate the enforcement of such laws, and to transport such officials in connection with such operations, subject to the following limitations:

1. Equipment operated by or with the assistance of DON personnel may not be used to interdict or interrupt the passage of vessels or aircraft, except when DON personnel are otherwise authorized to take such action with respect to a civilian law enforcement operation.

2. There must be a joint determination by the Secretary of Defense and the Attorney General that an emergency circumstance exists under Title 10, U.S. Code, Section 374(c) (2). An emergency circumstance may be determined to exist under this subparagraph only when the size and scope of the suspected criminal activity poses a serious threat to the interests of the United States, and enforcement of laws in paragraph 8(c)(5) of this instruction would be impaired seriously if the assistance described in this subparagraph were not provided.

3. The emergency authority in this subparagraph applies only to large-scale criminal activity at a particular point in time or over a fixed period. It does not permit use of this authority on a routine or extended basis.

(9) Nothing in these subparagraphs restricts the authority of military personnel to take immediate action to save lives or property or to protect a Federal function as provided in this paragraph.

(10) When DON personnel are otherwise assigned to provide assistance, the participation of such personnel shall be consistent with the limitations in such laws, if any, and such restrictions as may be established by the chain of command.

d. Other Permissible Indirect Assistance:

(1) Transfer of information acquired in the normal course of military operations. See paragraph 5 above.

(2) Such other actions approved by the Secretary of the Navy that do not subject civilians to use of military power that is regulatory, proscriptive, or compulsory.

e. Exceptions based on status. The restrictions in this paragraph do not apply to the following persons:

(1) A member of a Reserve Component when not on active duty, active duty for training, or inactive duty for training.

(2) A member of the National Guard when not in the Federal Service.

(3) A civilian employee of the Department of Defense. If the civilian employee is under the direct command and control of a military officer, assistance will not be provided unless otherwise permissible under paragraph 8.

(4) A member of a DON when off duty and in a private capacity. A member is not acting in a private capacity when assistance to law enforcement officials is rendered under the direction or control of DoD authorities.

9. Reimbursement and Accounting Procedures

a. As a general rule, reimbursement is required when equipment or services are provided to agencies outside DoD. When DON resources are used in support of civilian law enforcement efforts, the costs to DON shall be limited to the incremental or marginal costs.

b. As a part of the normal administrative control procedures, a copy of the civilian law enforcement agency request or a statement of the requested support and the official approval should be retained for two years by the command providing the assistance. The date(s) and location(s) of the support and the DON resources employed shall be included in the documentation.

c. The system used to account for the cost of support to civilian law enforcement agencies need be no different from that deemed adequate and sufficient for normal administration and control of resources. If the accounting system used by a command has the capability to accumulate and distribute the indirect costs incurred in providing the support, including the indirect costs for the overall management of the command, that system shall be used. Where such a system is not in use, but

26 January 2006

the existing accounting system can be easily modified to provide for a systematic and rational indirect costing process which would also be beneficial to the day-to-day operations of the command, such modification shall be effected. Where such a system is not in use and the command has no other recurring or substantial need for an accounting system which separately identifies direct and indirect costs, the command will use a memorandum costing or cost-finding system established by the Assistant Secretary of the Navy (Financial Management and Comptroller).

d. Requests for waivers of reimbursement shall be forwarded to the Chief of Naval Operations (N3/N5) or the Commandant of the Marine Corps (Code PS), as appropriate with a copy to Assistant Secretary of the Navy (Financial Management and Comptroller). Budgetary resources of the requesting civilian law enforcement agency and past practices with respect to similar types of assistance will be considered in evaluating such requests. The Under Secretary of Defense for Personnel and Readiness is the approval authority to waive reimbursement. Waivers of reimbursement will normally be appropriate in the following circumstances:

(1) When assistance under this instruction involves use of DON personnel in an activity that provides training or operational benefits that are substantially equivalent to the benefit of normal training or operations.

(2) When reimbursement is not otherwise required by law, and assistance is provided as an incidental aspect of the activity that is conducted for military purposes.

10. Responsibilities

a. The Chief of Naval Operations (N3/N5) and the Commandant of the Marine Corps (Code PS) shall:

(1) Respond to the Joint Staff in the formulation of data to evaluate the impact of requests for assistance on national security and military preparedness.

(2) Advise the ASN(M&RA) on the impact on national security and military preparedness of specific requests for assistance when the Assistant Secretary of the Navy or higher authority acts as the approving authority.

(3) Review training and operational programs to determine how assistance can be provided to civilian law

enforcement officials; consistent with the policy in this instruction, with a view towards identification of programs that would not involve any incremental costs or that would permit waiver of reimbursement.

b. Naval Component and Fleet Commanders; Commanders and Commanding Officers of major Navy shore commands; Commanding Generals of Marine Corps operating forces; Commanders of Marine Corps bases, camps, aviation installations, logistics installations, and unit training centers; Commanding Generals of Marine Corps Reserve support activities shall:

(1) Review training and operational programs to determine how assistance can be provided to civilian law enforcement officials, consistent with the policy in this instruction, with a view towards identification of programs that would not involve any incremental costs or that would permit waiver of reimbursement.

(2) Establish operational procedures for rendering assistance to civilian law enforcement officials to include as applicable:

(a) Establishment of ocean surveillance and reporting programs.

(b) Provision of towing or escort services for vessels seized by the U. S. Coast Guard.

(c) Provision of transportation for arrested persons in custody of civilian law enforcement officials.

(d) Provision of logistic support for law enforcement operational units.

(e) Embarkation of civilian law enforcement officials on selected Navy vessels and aircraft for law enforcement purposes.

(f) Use of force in civilian law enforcement activities in accordance with reference (i).

(3) Establish contact points in subordinate commands for purposes of coordination with civilian law enforcement officials.

c. Naval Criminal Investigative Service field offices shall normally serve as the primary point of contact between Navy and Marine Corps commands and Federal, State and local civilian law enforcement officials in connection with investigative requests for assistance under this instruction.

11. Release of Information. Information provided for public affairs purposes that concerns law enforcement operations is the primary responsibility of the civilian agency that is performing the law enforcement function. DON activities may provide information on DON support when approved by the Chief of Information.



Dionel M. Aviles
Under Secretary of the Navy

Distribution:
Electronic only, via Navy Directives Website
<http://neds.daps.dla.mil/>

APPENDIX D

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Department of Defense INSTRUCTION

NUMBER 3025.21

February 27, 2013

Incorporating Change 1, Effective February 8, 2019

USD(P)

SUBJECT: Defense Support of Civilian Law Enforcement Agencies

References: See Enclosure 1

1. PURPOSE. In accordance with the authority in DoD Directive (DoDD) 5111.1 and Deputy Secretary of Defense Memorandum (References (a) and (b)), this Instruction:

a. Establishes DoD policy, assigns responsibilities, and provides procedures for DoD support to Federal, State, tribal, and local civilian law enforcement agencies, including responses to civil disturbances within the United States, including the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States or any other political subdivision thereof in accordance with DoDD 3025.18 (Reference (c)).

b. Prescribes the regulations required by section 275 of title 10, United States Code (U.S.C.) (Reference (d)).

c. Incorporates and cancels DoDDs 3025.12, 5525.5, and 5030.46 (References (e), (f), and (g)).

2. APPLICABILITY. This Instruction:

a. Applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff (CJCS) and the Joint Staff, the Combatant Commands, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (hereinafter referred to collectively as the "DoD Components").

b. Applies to the Office of the Inspector General of the Department of Defense (IG, DoD) only to the extent that this Instruction does not conflict with any of the duties and responsibilities assigned to the IG, DoD pursuant to section 8(g) of Appendix, title 5, United States Code (U.S.C.) (also known as "The Inspector General Act of 1978, as amended" (Reference (h))).

c. Governs all DoD Component planning for and participation in Defense support of civilian law enforcement activities, including domestic emergencies and civil disturbance operations (CDO) (formerly referred to as "military assistance for civil disturbances").

d. Applies to National Guard (NG) personnel in Reference (d) status only.

e. Applies to civilian employees of the DoD Components and the activities of DoD contractors performed in support of the DoD Components.

f. Does not apply to:

(1) Counternarcotics activities.

(2) Assistance to foreign law enforcement officials.

(3) The Defense Intelligence and Counterintelligence Components, when providing intelligence assistance to civilian law enforcement activities in accordance with paragraph 2.6. of Executive Order 12333 (Reference (i)) and Procedure 12 of DoD 5240.1-R (Reference (j)).

(4) Requests for sensitive support, which are governed by DoDD S-5210.36 (Reference (k)).

(5) NG personnel in State active duty or title 32, U.S.C. (Reference (l)), status.

(6) Maritime Homeland Security Operations, defined as time-critical requests by the United States Coast Guard for short duration (less than 48 hours) DoD support in countering an immediate maritime security threat, that are governed by the DoD-Department of Homeland Security Memorandum of Agreement for Department of Defense Support to the United States Coast Guard for Maritime Homeland Security (Reference (m)).

(7) Aircraft piracy operations conducted pursuant to Reference (d).

3. DEFINITIONS. See Glossary.

4. POLICY. It is DoD policy that:

a. DoD shall be prepared to support civilian law enforcement agencies consistent with the needs of military preparedness of the United States, while recognizing and conforming to the legal limitations on direct DoD involvement in civilian law enforcement activities.

b. Support of civilian law enforcement agencies by DoD personnel shall be provided in accordance with sections 112, 351, 831, 1116, 1751, and 1385 (also known and hereinafter referred to as "The Posse Comitatus Act, as amended") of title 18, U.S.C. (Reference (n)); chapter 18 of Reference (d); section 1970 of title 2, U.S.C. (Reference (o)) (for support to the

U.S. Capitol Police); and other Federal laws, including those protecting the civil rights and civil liberties of individuals, as applicable.

c. The restrictions in paragraph 1.c. of Enclosure 3 of this Instruction shall apply to all actions of DoD personnel worldwide.

d. Exceptions, based on compelling and extraordinary circumstances, may be granted to the restrictions in paragraph 1.c. of Enclosure 3 of this Instruction for assistance to be provided outside the United States; only the Secretary of Defense or Deputy Secretary of Defense may grant such exceptions.

e. Requests for law enforcement support shall be evaluated using the criteria in Reference (c).

f. The ASD(HD&GS) may approve requests for DoD support of civilian law enforcement actions in accordance with Paragraph 4.s above the signature of Reference (c).

5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. See Enclosures 3 through 9. See Enclosure 4 for specific guidance for CDO.

7. RELEASABILITY. UNLIMITED. This Instruction is approved for public release and is available on the DoD Issuances Website at <https://www.esd.whs.mil/DD/>.

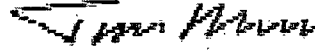
8. SUMMARY OF CHANGE 1. The changes to this issuance are administrative and:

a. Update organizational titles and references for accuracy.

b. Align policy with the existing policy in Reference (c).

c. Update permissible direct assistance (see Enclosure 3) in accordance with DoD Instruction (DoDI) 5505.03 (Reference (p)).

9. EFFECTIVE DATE. This Instruction is effective February 27, 2013.



James N. Miller
Under Secretary of Defense for Policy

Enclosures

1. References
2. Responsibilities
3. Participation of DoD Personnel in Civilian Law Enforcement Activities
4. DoD Support of CDO
5. Domestic EOD Support of Civilian Law Enforcement Agencies
6. Domestic Terrorism Incident Support
7. Use of Information Collected During DoD Operations
8. Use of DoD Equipment and Facilities
9. Funding

Glossary

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ENCLOSURE 1REFERENCES

- (a) DoD Directive 5111.1, "Under Secretary of Defense for Policy (USD(P))," December 8, 1999
- (b) Deputy Secretary of Defense Memorandum, "Delegations of Authority," November 30, 2006
- (c) DoD Directive 3025.18, "Defense Support of Civil Authorities (DSCA)," December 29, 2010, as amended
- (d) Sections 251-254, 271-282 (chapter 15), 2576, 2667, and 9442 and chapters 47¹ and 1011 of title 10, United States Code
- (e) DoD Directive 3025.12, "Military Assistance for Civil Disturbances (MACDIS)," February 4, 1994 (hereby cancelled)
- (f) DoD Directive 5525.5, "DoD Cooperation with Civilian Law Enforcement Officials," January 15, 1986 (hereby cancelled)
- (g) DoD Directive 5030.46, "Assistance to the District of Columbia Government in Combating Crime," March 26, 1971 (hereby cancelled)
- (h) Section 8² of Appendix and section 552a³ to title 5, United States Code
- (i) Executive Order 12333, "United States Intelligence Activities," as amended
- (j) DoD 5240.1-R, "Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons," December 1982, as amended
- (k) DoD Directive S-5210.36, "Provision of DoD Sensitive Support to DoD Components and Other Departments and Agencies of the U.S. Government (U)," November 6, 2008, as amended
- (l) Section 502 of title 32, United States Code
- (m) Memorandum of Agreement Between the Department of Defense and the Department of Homeland Security for Department of Defense Support to the United States Coast Guard for Maritime Homeland Security, April 5, 2006
- (n) Title 18, United States Code
- (o) Section 1970 of title 2, United States Code
- (p) DoD Instruction 5505.03, "Initiation of Investigations by Defense Criminal Investigative Organizations," February 13, 2017, as amended.
- (q) DoD Directive 5111.13, "Assistant Secretary of Defense for Homeland Defense and Global Security (ASD(HD&GS))," March 23, 2018
- (r) DoD Directive 5106.01, "Inspector General of the Department of Defense (IG DoD)," April 20, 2012, as amended
- (s) DoD Directive 1322.18, "Military Training," January, 13, 2009, as amended
- (t) DoD Directive 5105.77, "National Guard Bureau (NGB)," October 30, 2015, as amended
- (u) DoD Instruction 5525.07, "Implementation of the Memorandum of Understanding (MOU) Between the Departments of Justice (DoJ) and Defense Relating to the Investigation and Prosecution of Certain Crimes," June 18, 2007

¹ Also known as "the Uniform Code of Military Justice"

² Also known as "the Inspector General Act of 1978, as amended"

³ Also known as "The Privacy Act of 1974, as amended"

- (v) Memorandum of Agreement Between the Attorney General and the Secretary of Defense, "Agreement Governing the Conduct of Defense Department Counterintelligence Activities in Conjunction with the Federal Bureau of Investigation," April 5, 1979, and its supplement, "Coordination of Counterintelligence Matters Between FBI and DoD," June 3 and June 20, 1996
- (w) Sections 23, 78, 593, and 1861(a)⁴ of title 16, United States Code
- (x) Public Law 94-524, "The Presidential Protection Assistance Act of 1976," October 17, 1976, as amended
- (y) Sections 408 and 461-462 of title 22, United States Code
- (z) Section 180 of title 25, United States Code
- (aa) Sections 97, 1989, and 5121-5207⁵ of title 42, United States Code
- (ab) DoD Instruction 6200.03, "Public Health Emergency Management Within the Department of Defense," March 5, 2010, as amended
- (ac) Section 1065 of title 43, United States Code
- (ad) Sections 1418, 1422, and 1591 of title 48, United States Code
- (ae) Section 220 of title 50, United States Code
- (af) Secretaries of the Departments of Defense, Interior, and Transportation; Administrator of the National Aeronautics and Space Administration; and Chair of the Federal Communications Commission; "National Search and Rescue Plan of the United States," January 2007, as amended
- (ag) DoD Instruction 3003.01, "DoD Support to Civil Search and Rescue (SAR)," September 26, 2011
- (ah) DoD Instruction 5525.13, "Limitation of Authority to Deputize DoD Uniformed Law Enforcement Personnel by State and Local Governments," September 28, 2007
- (ai) DoD Directive 5210.56, "Arming and the Use of Force," November 18, 2016
- (aj) Chairman of the Joint Chiefs of Staff Instruction 3121.01B, "Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces," June 13, 2005
- (ak) DoD Instruction 4515.13, "Air Transportation Eligibility," January 22, 2016, as amended
- (al) Sections 801-904 and 951-971 of title 21, United States Code
- (am) Sections 1324-1328 of title 8, United States Code
- (an) Section 1401 of title 19, United States Code
- (ao) Chapter 705 of title 46, United States Code
- (ap) Deputy Secretary of Defense Memorandum, "DoD Training Support to U.S. Civilian Law Enforcement Agencies," June 29, 1996⁶
- (aq) Deputy Secretary of Defense Memorandum, "Request for Exception to Policy," November 12, 1996⁷
- (ar) DoD Directive 5240.01, "DoD Intelligence Activities," August 27, 2007, as amended
- (as) DoD Directive 5111.10, "Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict (ASD(SO/LIC))," March 22, 1995, as amended

⁴ Section 1861(a) is part of "The Fishery Conservation and Management Act of 1976, as amended" -- Public Law 94-265, approved April 13, 1976; 16 U.S.C. 1801-1882; 90 Stat. 331; as amended.

⁵ Also known as "The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, as amended" ("the Stafford Act")

⁶ Available from OASD(HD&GS)/Room 3D247, 2600 Defense Pentagon, Washington, D.C. 20301

⁷ Available from OASD(HD&GS)/Room 3D247, 2600 Defense Pentagon, Washington, D.C. 20301

- (at) Parts 260-270 of title 40, Code of Federal Regulations, Hazardous Waste Management System: General
- (au) DoD Manual 6055.09, Volume 3, "DoD Ammunition and Explosives Safety Standards: General Quantity-Distance Criteria for Accidental Detonations," February 29, 2008, as amended
- (av) DoD Directive 3025.13, "Employment of DoD Capabilities in Support of the U.S. Secret Service (USSS), Department of Homeland Security (DHS)," October 8, 2010, as amended
- (aw) DoD Manual 5100.76, "Physical Security of Sensitive Conventional Arms, Ammunitions, and Explosives (AA&E)," April 17, 2012, as amended
- (ax) National Telecommunications and Information Administration, Manual of Regulations and Procedures for Federal Radio Frequency Management, May 2012 Revision of the January 2008 Edition⁸
- (ay) DoD Instruction 5160.68, Single Manager for Conventional Ammunition (SMCA): Responsibilities of the SMCA, the Military Services, and the United States Special Operations Command (USSOCOM), December 29, 2008, as amended
- (az) DoD Instruction 6055.17, "DoD Emergency Management (EM) Program," February 13, 2017, as amended
- (ba) DoD 5400.11-R, "Department of Defense Privacy Program," May 14, 2007
- (bb) DoD Directive 5200.27, "Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense," January 7, 1980
- (bc) DoD Directive 5400.11, "DoD Privacy Program," October 29, 2014
- (bd) Sections 1535⁹ and 6501-6508¹⁰ of title 31, United States Code
- (be) Title 40, United States Code (also known as "The Federal Property and Administrative Services Act of 1949, as amended")
- (bf) Title 41, United States Code
- (bg) Chapters 21, 25, 29, and 31 of title 44, United States Code
- (bh) DoD Instruction 4165.70, "Real Property Management," April 6, 2005, as amended
- (bi) DoD Directive 5410.12, "Economic Adjustment Assistance to Defense-Impacted Communities," July 5, 2006
- (bj) DoD 7000.14-R, "Department of Defense Financial Management Regulations (FMRs)," Volumes 1-15, date varies per volume
- (bk) Office of the Chairman of the Joint Chiefs of Staff, "DoD Dictionary of Military and Associated Terms," current edition

⁸ <http://www.ntia.doc.gov/page/2011/manual-regulations-and-procedures-federal-radio-frequency-management-redbook>

⁹ Also known as "The Economy Act of 1932, as amended" ("the Economy Act")

¹⁰ Also known as "The Intergovernmental Cooperation Act of 1968, as amended"

ENCLOSURE 2RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR POLICY (USD(P)). The USD(P) shall establish DoD policy governing defense support of civilian law enforcement agencies and facilitate the coordination of that policy with Federal departments and agencies; State, local, and tribal agencies; and the DoD Components, as appropriate.

2. ASSISTANT SECRETARY OF DEFENSE FOR HOMELAND DEFENSE AND GLOBAL SECURITY AFFAIRS (ASD(HD&GS)). The ASD(HD&GS), under the authority, direction, and control of the USD(P) and in accordance with DoDD 5111.13 (Reference (q)), shall develop, coordinate, recommend, and supervise the implementation of policy for defense support of civilian law enforcement agencies and defense support of civil authorities (DSCA), including law enforcement support activities. In executing this responsibility for DoD law enforcement support activities, the ASD(HD&GS) shall:

a. Develop procedures and issue appropriate direction as necessary for defense support of civilian law enforcement agencies in coordination with the General Counsel of the Department of Defense, and in consultation with the Attorney General of the United States (AG), as appropriate, and in accordance with responsibilities assigned in References (c) and (q). This includes tasking the DoD Components to plan for and to commit DoD resources in response to requests from civil authorities for CDO (such a commitment of DoD resources for CDO must be authorized by the President of the United States and directed by the Secretary of Defense).

b. Serve as the principal point of contact between DoD and the Department of Justice for planning and executing CDO.

c. Coordinate with civilian law enforcement agencies on policies to further DoD cooperation with civilian law enforcement agencies.

d. Provide guidance for the use of Reserve Component personnel in support of civilian law enforcement agencies, in coordination with the Secretaries of the Military Departments and the Assistant Secretary of Defense for Manpower and Reserve Affairs (ASD(M&RA)), and with the Chief, National Guard Bureau (NGB), as appropriate. This will include guidance for use by approving authorities in evaluating the effect on military preparedness of requests for civilian law enforcement assistance that may involve use of the Reserve Components.

e. Assist in the development of policy regulating plans, procedures, and requirements of the DoD Components with authority over defense resources that may be employed to provide law enforcement support.

f. Inform the ASD(M&RA) of all requests for assistance by civilian law enforcement agencies that may be met using Reserve Component personnel and resources.

(1) Inform the Chief, NGB of all requests for assistance by civilian law enforcement agencies that may be met using NG personnel.

(2) Coordinate with the ASD(M&RA) and others as appropriate regarding duty status policies (e.g., performance of duty pursuant to sections 251-254 and 271-282 of Reference (d)).

g. Coordinate with the CJCS in advance of the commitment of any Federal military forces.

h. Coordinate with the Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense, when providing assistance to civilian law enforcement agencies to ensure an appropriate funding approach in accordance with Enclosure 9 of this Instruction.

i. In coordination with the Under Secretary of Defense for Intelligence (USD(I)), the CJCS, the Commanders of the Combatant Commands with DSCA responsibilities, and the Secretaries of the Military Departments, establish protocols and guidance for ensuring that the needs of civilian law enforcement officials for information are taken into account in the planning and execution of military training and operations.

j. Ensure, in coordination with the ASD for Special Operations and Low-Intensity Conflict (SO/LIC), the proper use of electronic counter-measures (ECM) by or in support of DoD explosive ordnance disposal (EOD) personnel when supporting civil authorities is addressed in interagency agreements and contingency plans.

k. Approve requests for DoD support of civilian law enforcement agencies in accordance with Reference (c).

3. USD(I). The USD(I) shall:

a. Establish DoD processes and procedures to provide support to civilian law enforcement officials with Defense Intelligence Component resources in accordance with appropriate statutory authorities and DoD and Intelligence Community policy.

b. Facilitate consultation on DoD policy regarding intelligence support of law enforcement officials, with appropriate Federal departments and agencies; State, local, and tribal agencies; and the DoD Components.

4. IG, DoD. The IG, DoD, shall issue guidance on cooperation with civilian law enforcement officials with respect to audits and investigations conducted, supervised, monitored, or initiated pursuant to DoDD 5106.01 (Reference (r)).

5. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R)). The USD(P&R) shall monitor and oversee the development of integrated training

capabilities related to defense support to civilian law enforcement officials and the integration of these training capabilities into exercises and training to build, sustain, and assess readiness in accordance with DoDD 1322.18 (Reference (s)).

6. ASD(M&RA). The ASD(M&RA), under the authority, direction, and control of the USD(P&R), shall assist the ASD(HD&GS) in the development of guidance for use by approving authorities in evaluating the effect on military preparedness of requests for civilian law enforcement assistance that may involve use of the Reserve Components.

7. HEADS OF THE DoD COMPONENTS. The Heads of the DoD Components shall:

a. Strictly comply with and disseminate throughout their Components the guidance issued by the ASD(HD&GS) pursuant to section 2 of this enclosure.

b. Identify appropriate resources for civilian law enforcement support that are consistent with law and DoD policy to carry out the intent of this Instruction.

c. Review training and operational programs to determine how and where assistance can best be provided to civilian law enforcement officials, consistent with the responsibilities established in this enclosure. This review should include recommendations regarding activities for which reimbursement could be waived in accordance with section 2 of Enclosure 9.

d. Issue implementing guidance, in coordination with the ASD(HD&GS), incorporating the procedures in this Instruction, including:

(1) Procedures for prompt transfer of relevant information to law enforcement agencies.

(2) Procedures for establishing local contact points in subordinate commands for purposes of coordination with Federal, State, tribal, and local civilian law enforcement officials.

(3) Guidelines for evaluating requests for assistance in terms of effect on military preparedness of the United States.

e. Inform the CJCS of all requests requiring approval of the ASD(HD&GS) or the Secretary of Defense, in accordance with this Instruction.

8. SECRETARIES OF THE MILITARY DEPARTMENTS. The Secretaries of the Military Departments, in addition to the responsibilities in section 7 of this enclosure, shall:

a. Provide resources to the DoD Components, consistent with DoD policies, goals, and objectives, to carry out the purpose of this Instruction.

b. Coordinate with the Commanders of the Combatant Commands with DSCA responsibilities to ensure that the needs of civilian law enforcement officials for information are taken into account in the planning and execution of military training and operations.

9. CJCS. The CJCS, in addition to the responsibilities in section 7 of this enclosure, shall:

a. Assist the ASD(HD&GS) in developing recommendations for responding to requests for CDO and developing interagency policies on CDO.

b. Develop processes to evaluate the effect of requests for civilian law enforcement assistance on military preparedness of the United States.

c. Advise the Secretary of Defense, ASD(HD&GS), or Heads of the DoD Components, upon request, on the effect on military preparedness of the United States of any request for defense assistance with respect to CDO.

10. COMMANDERS OF THE COMBATANT COMMANDS WITH DSCA RESPONSIBILITIES. The Commanders of the Combatant Commands with DSCA responsibilities, through the CJCS, shall, in addition to the responsibilities in section 7 of this enclosure:

a. Provide support of civilian law enforcement authorities as directed by the Secretary of Defense.

b. Implement the provisions of this Instruction in appropriate training and exercises.

c. When designated as a supported commander, coordinate with supporting DoD Components all reimbursement for assistance provided under the provisions of this Instruction.

d. When designated as a supported commander, coordinate with the CJCS, the ASD(HD&GS), and the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict (ASD(SO/LIC)) (for the employment of special operations forces) for all military preparations and operations, including the employment of Federal military forces as requested by the AG and approved by the Secretary of Defense, as a result of any domestic emergency, including a terrorist incident, civil disturbance, or a natural disaster. Commanders shall observe all such law enforcement policies as the AG may determine appropriate.

e. For a terrorist incident having the potential for a request for military assistance by mutual agreement of DoD and the Federal Bureau of Investigation (FBI), designated Combatant Commanders may dispatch observers to the incident site to evaluate the situation. Any dispatch of DoD counterterrorism forces must be specifically authorized by the Secretary of Defense through the CJCS.

f. Coordinate with the Secretaries of the Military Departments to ensure that the needs of civilian law enforcement officials for information are taken into account in the planning and execution of military training and operations.

11. COMMANDERS OF UNITED STATES NORTHERN COMMAND (USNORTHCOM), UNITED STATES INDO-PACIFIC COMMAND (USINDOPACOM), AND UNITED STATES SPECIAL OPERATIONS COMMAND (USSOCOM). The Commanders of USNORTHCOM, USINDOPACOM, and USSOCOM, through the CJCS and in addition to the responsibilities in sections 7 and 10 of this enclosure, shall:

a. Serve as the DoD planning agents for support of civilian law enforcement activities, including CDO, following the guidance of the ASD(HD&GS) and in coordination with the CJCS.

b. Lead planning activities for support of civilian law enforcement activities, including CDO, of the DoD Components in accordance with section 3 of Enclosure 4. Serve as the DoD financial managers for their respective CDO operations in accordance with section 2 of Enclosure 9.

12. CHIEF, NGB. The Chief, NGB, shall:

a. Implement the procedures in this Instruction.

b. Assist the ASD(HD&GS) in accordance with DoDD 5105.77 (Reference (t)) in developing policy guidance regarding the use of NG personnel for DoD support of civilian law enforcement agencies.

c. Assist the ASD(HD&GS) in the development of policy guidance for use by approving authorities in evaluating the effect on military preparedness if NG personnel are used to fulfill requests for civilian law enforcement assistance.

d. Serve as an advisor to the Commanders of the Combatant Commands on NG matters pertaining to Combatant Command responsibilities under this Instruction, and support planning and coordination for such activities as requested by the CJCS or the Commanders of other Combatant Commands.

e. On all matters pertaining to the NG, serve as the channel of communications between: the Secretary of Defense, the CJCS, and the DoD Components (other than the Department of the Army and the Department of the Air Force); and the States. The Chief, NGB, shall keep the Secretaries of the Army and the Air Force informed of all communications unless otherwise directed by the Secretary of Defense.

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f. Coordinate the sharing of State contingency plans for the use of non-federalized NG forces in CDO roles between the responsible State Adjutants General and the responsible Combatant Commander.

ENCLOSURE 3PARTICIPATION OF DoD PERSONNEL IN CIVILIAN LAW ENFORCEMENT
ACTIVITIES1. GUIDING STATUTORY REQUIREMENTS AND SUPPORTING POLICIESa. Statutory Restrictions

(1) The primary restriction on DoD participation in civilian law enforcement activities is the Posse Comitatus Act. It provides that whoever willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute U.S. laws, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, shall be fined under Reference (n), or imprisoned not more than 2 years, or both.

(2) Section 275 of Reference (d) provides that the Secretary of Defense shall prescribe such regulations as may be necessary to ensure that any activity (including the provision of any equipment or facility or the assignment or detail of any personnel) under chapter 15 of Reference (d) does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.

b. Permissible Direct Assistance. Categories of active participation in direct law-enforcement-type activities (e.g., search, seizure, and arrest) that are not restricted by law or DoD policy are:

(1) Actions taken for the primary purpose of furthering a DoD or foreign affairs function of the United States, regardless of incidental benefits to civil authorities. This does not include actions taken for the primary purpose of aiding civilian law enforcement officials or otherwise serving as a subterfuge to avoid the restrictions of the Posse Comitatus Act. Actions under this provision may include (depending on the nature of the DoD interest and the authority governing the specific action in question):

(a) Investigations and other actions related to enforcement of chapter 47 of Reference (d) (also known as “the Uniform Code of Military Justice”).

(b) Investigations and other actions that are likely to result in administrative proceedings by the DoD, regardless of whether there is a related civil or criminal proceeding. (See DoDI 5525.07 (Reference (u)) and Memorandum of Agreement Between the AG and the Secretary of Defense (Reference (v)) with respect to matters in which the DoD and the Department of Justice both have an interest.)

(c) Investigations and other actions related to a commander’s inherent authority to maintain law and order on a DoD installation or facility.

(d) Protection of classified defense information or equipment or controlled unclassified information (e.g., trade secrets and other proprietary information), the unauthorized disclosure of which is prohibited by law.

(e) Protection of DoD personnel, equipment, and official guests.

(f) Such other actions that are undertaken primarily for a military or foreign affairs purpose.

(2) Audits and investigations conducted by, under the direction of, or at the request of the IG, DoD, pursuant to the Inspector General Act of 1978, as amended.

(3) When permitted under emergency authority in accordance with Reference (c), Federal military commanders have the authority, in extraordinary emergency circumstances where prior authorization by the President is impossible and duly constituted local authorities are unable to control the situation, to engage temporarily in activities that are necessary to quell large-scale, unexpected civil disturbances because:

(a) Such activities are necessary to prevent significant loss of life or wanton destruction of property and are necessary to restore governmental function and public order; or,

(b) When duly constituted Federal, State, or local authorities are unable or decline to provide adequate protection for Federal property or Federal governmental functions. Federal action, including the use of Federal military forces, is authorized when necessary to protect Federal property or functions.

(4) DoD actions taken pursuant to sections 251-254 of Reference (d) relating to the use of Federal military forces in specified circumstances with respect to insurrection, domestic violence, or conspiracy that hinders the execution of State or Federal law.

(5) Actions taken under express statutory authority to assist officials in executing the laws, subject to applicable limitations. The laws that permit direct DoD participation in civilian law enforcement include:

(a) Protection of national parks and certain other Federal lands consistent with sections 23, 78, and 593 of title 16, U.S.C. (Reference (w)).

(b) Enforcement of the Fishery Conservation and Management Act of 1976, as amended, pursuant to section 1861(a) of Reference (w).

(c) Assistance in the case of crimes against foreign officials, official guests of the United States, and other internationally protected persons pursuant to sections 112 and 1116 of Reference (n).

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(d) Assistance in the case of crimes against Members of Congress, Members-of-Congress-elect, Justices of the Supreme Court and nominees, and certain senior Executive Branch officials and nominees in accordance with section 351 of Reference (n).

(e) Assistance in the case of crimes involving nuclear materials in accordance with section 831 of Reference (n).

(f) Protection of the President, Vice President, and other designated dignitaries in accordance with section 1751 of Reference (n) and Public Law 94-524 (Reference (x)).

(g) Actions taken in support of the neutrality laws in accordance with sections 408 and 461-462 of title 22, U.S.C. (Reference (y)).

(h) Removal of persons unlawfully present on Indian lands in accordance with section 180 of title 25, U.S.C. (Reference (z)).

(i) Execution of quarantine and certain health laws in accordance with section 97 of title 42, U.S.C. (Reference (aa)) and DoDI 6200.03 (Reference (ab)).

(j) Removal of unlawful enclosures from public lands in accordance with section 1065 of title 43, U.S.C. (Reference (ac)).

(k) Protection of the rights of a discoverer of an island covered by section 1418 of title 48, U.S.C. (Reference (ad)).

(l) Support of territorial governors if a civil disorder occurs, in accordance with sections 1422 and 1591 of Reference (ad).

(m) Actions in support of certain customs laws in accordance with section 220 of title 50, U.S.C. (Reference (ae)).

(n) Actions by Defense Criminal Investigative Organizations in support of internet crimes against children having a DoD nexus in accordance with Reference (p).

(6) Actions taken to provide search and rescue support domestically under the authorities provided in the National Search and Rescue Plan (Reference (af)) and DoDI 3003.01 (Reference (ag)).

c. Restrictions on Direct Assistance

(1) Except as authorized in this Instruction (e.g., in Enclosures 3 and 4), DoD personnel are prohibited from providing the following forms of direct civilian law enforcement assistance:

(a) Interdiction of a vehicle, vessel, aircraft, or other similar activity.

(b) A search or seizure.

(c) An arrest; apprehension; stop and frisk; engaging in interviews, interrogations, canvassing, or questioning of potential witnesses or suspects; or similar activity.

(d) Using force or physical violence, brandishing a weapon, discharging or using a weapon, or threatening to discharge or use a weapon except in self-defense, in defense of other DoD persons in the vicinity, or in defense of non-DoD persons, including civilian law enforcement personnel, in the vicinity when directly related to an assigned activity or mission.

(e) Evidence collection; security functions; crowd and traffic control; and operating, manning, or staffing checkpoints.

(f) Surveillance or pursuit of individuals, vehicles, items, transactions, or physical locations, or acting as undercover agents, informants, investigators, or interrogators.

(g) Forensic investigations or other testing of evidence obtained from a suspect for use in a civilian law enforcement investigation in the United States unless there is a DoD nexus (e.g., the victim is a member of the Military Services or the crime occurred on an installation under exclusive DoD jurisdiction) or the responsible civilian law enforcement official requesting such testing declares in writing that the evidence to be examined was obtained by consent. Requests for exceptions to this restriction must be made through channels to the ASD(HD&GS), who will evaluate, in coordination with the General Counsel of the Department of Defense, whether to seek Secretary of Defense authorization for an exception to policy.

(2) The use of deputized State or local law enforcement powers by DoD uniformed law enforcement personnel shall be in accordance with DoDI 5525.13 (Reference (ah)).

(3) Except as otherwise directed by the Secretary of Defense, the rules for the use of force and authority for the carrying of firearms by DoD personnel providing authorized support under this Instruction shall be in accordance with DoDD 5210.56 (Reference (ai)) and any additional Secretary of Defense-approved rules for the use of force contained in CJCS Instruction 3121.01B (Reference (aj)).

(4) Exceptions to these restrictions for assistance may be granted when the assistance is to be provided outside the United States. Only the Secretary of Defense or Deputy Secretary of Defense may grant such exceptions, based on compelling and extraordinary circumstances.

d. Use of DoD Personnel to Operate or Maintain Equipment. The use of DoD personnel to operate or maintain, or to assist in operating or maintaining, equipment shall be limited to situations when the use of non-DoD personnel for operation or maintenance of such equipment would be unfeasible or impractical from a cost or time perspective and would not otherwise compromise military preparedness of the United States. In general, the head of the civilian law enforcement agency may request a DoD Component to provide personnel to operate or maintain, or to assist in operating or maintaining, equipment for the civilian agency. This assistance shall be subject to this guidance:

(1) Such assistance may not involve DoD personnel directly participating in a law enforcement operation (as described in paragraph 1.c. of this enclosure.)

(2) The performance of such assistance by DoD personnel shall be at a location where there is not a reasonable likelihood of a confrontation between law enforcement personnel and civilians.

(3) The use of DoD aircraft to provide transportation for civilian law enforcement agencies may be provided only in accordance with DoD 4515.13-R (Reference (ak)).

(4) A request for DoD personnel to operate or maintain, or to assist in operating or maintaining, equipment must be made pursuant to section 274 of Reference (d) or other applicable law that permits DoD personnel to provide such assistance to civilian law enforcement officials. A request that is made pursuant to section 274 of Reference (d) must be made by the head of a civilian agency empowered to enforce any of these laws:

(a) Sections 801-904 and 951-971 of title 21, U.S.C. (Reference (al)).

(b) Sections 1324-1328 of title 8, U.S.C. (Reference (am)).

(c) A law relating to the arrival or departure of merchandise, as defined in section 1401 of title 19, U.S.C. (Reference (an)), into or out of the customs territory of the United States, as defined in Reference (an), or any other territory or possession of the United States.

(d) Chapter 705 of title 46, U.S.C. (Reference (ao)).

(e) Any law, foreign or domestic, prohibiting terrorist activities.

(5) In addition to the assistance authorized by subparagraph 1.b.(1) of this enclosure:

(a) DoD personnel may be made available to a Federal law enforcement agency to operate or assist in operating equipment, to the extent the equipment is used in a supporting role, with respect to:

1. A criminal violation of the laws specified in subparagraph 1.d.(4) of this enclosure.

2. Assistance that the Federal law enforcement agency is authorized to furnish to a State, local, or foreign government that is involved in the enforcement of laws similar to those in subparagraph 1.d.(4) of this enclosure.

3. A foreign or domestic counter-terrorism operation, including support of FBI Joint Terrorism Task Forces.

4. Transportation of a suspected terrorist from a foreign country to the United States to stand trial.

(b) DoD personnel made available to a civilian law enforcement agency pursuant to section 274 of Reference (d) may operate equipment for:

1. Detection, monitoring, and communication of the movement of air and sea traffic.
2. Detection, monitoring, and communication of the movement of surface traffic outside of the geographic boundary of the United States and, if the initial detection occurred outside of the boundary, within the United States, not to exceed 25 miles of the boundary.
3. Aerial reconnaissance (does not include satellite reconnaissance).
4. Interception of vessels or aircraft detected outside the land area of the United States for the purposes of communicating with such vessels and aircraft to direct such vessels and aircraft to go to a location designated by appropriate civilian officials.
5. Operation of equipment to facilitate communications in connection with the law enforcement programs specified in subparagraph 1.d.(4) of this enclosure.
6. The following activities that are subject to joint approval by the Secretary of Defense and the AG (and the Secretary of State in the case of a law enforcement operation outside of the land area of the United States):
 - a. The transportation of civilian law enforcement personnel along with any other civilian or military personnel who are supporting, or conducting, a joint operation with civilian law enforcement personnel.
 - b. The operation of a base of operations for civilian law enforcement and supporting personnel.
 - c. The transportation of suspected terrorists from foreign countries to the United States for trial (so long as the requesting Federal law enforcement agency provides all security for such transportation and maintains custody over the suspect through the duration of the transportation).
7. The detection, monitoring, and tracking of the movement of weapons of mass destruction under the circumstances described above, when outside the United States.

(6) DoD personnel made available to operate equipment for the purposes in subparagraphs 1.d.(5)(b)1 and 4 of this enclosure may continue to operate such equipment in cases involving the pursuit of vessels or aircraft into the land area of the United States where the detection began outside such land area.

(7) With the approval of the Secretary of Defense, DoD personnel may be made available to any Federal, State, or local civilian law enforcement agency to operate equipment for purposes other than described in section 2 of this enclosure, only to the extent that such support

does not involve direct assistance by such personnel in a civilian law enforcement operation unless such direct participation is otherwise authorized by law and is authorized by the Secretary of Defense.

(8) Nothing in this Instruction restricts the authority of Federal military commanders to take emergency action to prevent loss of life or wanton destruction of property as provided in subparagraph 1.b.(3) of this enclosure.

(9) When DoD personnel are otherwise assigned to provide assistance with respect to the laws specified in subparagraph 1.b.(5) of this enclosure, the participation of such personnel shall be consistent with the limitations in such laws, if any, and such restrictions as may be established by policy or the DoD Components concerned.

e. Expert Advice. DoD Components may provide, subject to section 5 of this enclosure, expert advice to Federal, State, or local law enforcement officials in accordance with section 273 of Reference (d). This does not permit direct assistance by DoD personnel in activities that are fundamentally civilian law enforcement operations, except as otherwise authorized in this enclosure.

f. Training

(1) The DoD Components may provide, subject to section 5 of this enclosure, training to Federal, State, and local civilian law enforcement officials. This does not permit large-scale or elaborate DoD training, and does not permit regular or direct involvement of DoD personnel in activities that are fundamentally civilian law enforcement operations, except as otherwise authorized in this enclosure.

(2) Training of Federal, State, and local civilian law enforcement officials shall be provided according to this guidance:

(a) Assistance shall be limited to situations when the use of non-DoD personnel would be unfeasible or impractical from a cost or time perspective and would not otherwise compromise military preparedness of the United States.

(b) Assistance may not involve DoD personnel participating in a law enforcement operation, except as otherwise authorized by this Instruction.

(c) Assistance of DoD personnel shall be provided at a location where there is not a reasonable likelihood of a confrontation between law enforcement personnel and civilians, except as otherwise authorized by law.

(3) This paragraph does not apply to advanced military training, which is addressed in Deputy Secretary of Defense memorandums (References (ap) and (aq)). Additional exceptions to the policy in Reference (ap) may be requested on a case-by-case basis. Requests for such exceptions shall be forwarded through the ASD(HD&GS). Advanced military training:

(a) Includes advanced marksmanship training, including sniper training, military operations in urban terrain (MOUT), advanced MOUT, close quarters battle/close quarters combat, and similar training.

(b) Does not include basic military skills such as basic marksmanship, patrolling, mission planning, medical, and survival.

g. Other Permissible Assistance. These forms of indirect assistance are not prohibited by law or DoD policy:

(1) Transfer to Federal, State, or local law enforcement officials of information acquired in the normal course of DoD operations that may be relevant to a violation of any Federal or State laws.

(2) Information obtained through procedures, means, or devices authorized by Federal law exclusively for use in gathering, obtaining, or acquiring national intelligence or military intelligence may be transferred unless specifically prohibited by law. Information shall not be transferred if it meets any of the following criteria:

(a) The acquisition of that information violates applicable law protecting the privacy or constitutional rights of any person, including rights protected by section 552a of Reference (h) (also known as "The Privacy Act of 1974, as amended").

(b) It would have been illegal for those civilian law enforcement officials to have obtained the information or employ the procedures, means, or devices used by the DoD Component to obtain the information.

(3) Such other actions, approved in accordance with procedures established by the DoD Components concerned, that do not subject civilians to the use of DoD power that is regulatory, prescriptive, proscriptive, or compulsory.

2. EXCEPTIONS BASED ON STATUS. The restrictions in section 1 of this enclosure do not apply to:

a. A member of a Reserve Component when not on active duty, active duty for training, or inactive duty for training.

b. A member of the NG when not in Federal service.

c. A civilian employee. If the civilian employee is under the direct control of a military officer, assistance will not be provided unless it is permitted by section 3 of this enclosure.

d. A member of a Military Service when off duty and in a private capacity. A Service member is acting in a private capacity when he or she responds on his or her own volition to

assist law enforcement officials instead of acting under the direction or control of DoD authorities.

e. A member of the Civil Air Patrol, except when performing missions pursuant to section 9442(b) of Reference (d).

3. EXCEPTIONS BASED ON MILITARY SERVICE. By policy, Posse Comitatus Act restrictions (as well as other restrictions in this Instruction) are applicable to the Department of the Navy (including the Marine Corps) with such exceptions as the Secretary of Defense may authorize in advance on a case-by-case basis.

a. Such exceptions shall include requests from the AG for assistance pursuant to section 873(b) of Reference (a).

b. Requests for approval of other exceptions should be made by a senior official of the civilian law enforcement agency concerned, who verifies that:

(1) The size or scope of the suspected criminal activity poses a serious threat to the interests of the United States and enforcement of a law within the jurisdiction of the civilian agency would be seriously impaired if the assistance were not provided because civilian assets are not available to perform the mission; or

(2) Civilian law enforcement assets are not available to perform the mission, and temporary assistance is required on an emergency basis to prevent loss of life or wanton destruction of property.

4. MILITARY READINESS. Assistance may not be provided if such assistance could adversely affect military preparedness. Implementing documents issued by the Heads of the DoD Components shall ensure that approval for the disposition of equipment is vested in officials who can assess the effect of such disposition on military preparedness.

5. APPROVAL AUTHORITY. Requests by civilian law enforcement officials for use of DoD personnel to provide assistance to civilian law enforcement agencies shall be forwarded to the appropriate approval authority.

a. The Secretary of Defense is the approval authority for requests for direct assistance in support of civilian law enforcement agencies, including those responding with assets with the potential for lethality, except for the use of emergency authority as provided in subparagraph 1.b.(3) of this enclosure and in Reference (c), and except as otherwise provided below.

b. Requests that involve Defense Intelligence and Counterintelligence entities are subject to approval by the Secretary of Defense and the guidance in DoDD 5240.01(Reference (ar)) and Reference (j).

c. The Secretaries of the Military Departments and the Directors of the Defense Agencies may, in coordination with the ASD(HD&GS), approve the use of DoD personnel:

(1) To provide training or expert advice in accordance with paragraphs 1.e. and 1.f. of this enclosure.

(2) For equipment maintenance in accordance with paragraph 1.d. of this enclosure.

(3) To monitor and communicate the movement of air and sea traffic in accordance with subparagraphs 1.d.(5)(b) 1 and 4 of this enclosure.

d. All other requests, including those in which subordinate authorities recommend disapproval, shall be submitted promptly to the ASD(HD&GS) for consideration by the Secretary of Defense, as appropriate.

e. The views of the CJCS shall be obtained on all requests that are considered by the Secretary of Defense or the ASD(HD&GS), that otherwise involve personnel assigned to a unified or specified command, or that may affect military preparedness.

f. All requests that are to be considered by the Secretary of Defense or the ASD(HD&GS) that may involve the use of Reserve Component personnel or equipment shall be coordinated with the ASD(M&RA). All requests that are to be considered by the Secretary of Defense or the ASD(HD&GS) that may involve the use of NG personnel also shall be coordinated with the Chief, NGB. All requests that are to be considered by the Secretary of Defense or the ASD(HD&GS) that may involve the use of NG equipment also shall be coordinated with the Secretary of the Military Department concerned and the Chief, NGB.

ENCLOSURE 4DoD SUPPORT OF CDO1. GUIDING STATUTORY REQUIREMENTS AND SUPPORTING POLICIES

a. The President is authorized by the Constitution and laws of the United States to employ the Armed Forces of the United States to suppress insurrections, rebellions, and domestic violence under various conditions and circumstances. Planning and preparedness by the Federal Government, including DoD, for civil disturbances is important due to the potential severity of the consequences of such events for the Nation and the population.

b. The primary responsibility for protecting life and property and maintaining law and order in the civilian community is vested in State and local governments. Supplementary responsibility is vested by statute in specific agencies of the Federal Government other than DoD. The President has additional powers and responsibilities under the Constitution of the United States to ensure that law and order are maintained.

c. Any employment of Federal military forces in support of law enforcement operations shall maintain the primacy of civilian authority and unless otherwise directed by the President, responsibility for the management of the Federal response to civil disturbances rests with the Attorney General. The Attorney General is responsible for receiving State requests for Federal military assistance, coordinating such requests with the Secretary of Defense and other appropriate Federal officials, and presenting such requests to the President who will determine what Federal action will be taken.

d. The employment of Federal military forces to control civil disturbances shall only occur in a specified civil jurisdiction under specific circumstances as authorized by the President, normally through issuance of an Executive order or other Presidential directive authorizing and directing the Secretary of Defense to provide for the restoration of law and order in a specific State or locality in accordance with sections 251-254 of Reference (d).

e. Planning by the DoD Components for CDO shall be compatible with contingency plans for national security emergencies, and with planning for DSCA pursuant to Reference (c). For example:

(1) Guidelines concerning the use of deputized State or local law enforcement powers by DoD uniformed law enforcement personnel are outlined in Reference (ah).

(2) Guidelines concerning the use of deadly force and/or the carrying of firearms by DoD personnel while engaged in duties related to security or law and order, criminal investigations, or counterintelligence investigations; protecting personnel; protecting vital Government assets; or guarding Government installations and sites, property, and persons (including prisoners) are outlined in Reference (ai) and any additional Secretary of Defense-approved rules for the use of force contained in Reference (aj).

2. DoD REQUIREMENTS

a. Federal military forces shall not be used for CDO unless specifically authorized by the President, except under emergency authority as provided in Reference (c) and subparagraph 1.b.(3) of Enclosure 3.

b. Federal military forces shall be made available for CDO as directed by the President. The Secretary of Defense or other authorized DoD official may, where authorized and consistent with the direction of the President, establish the source and composition of those forces to achieve appropriate balance with other national security or DoD priorities.

c. Federal military forces employed in CDO shall remain under Secretary of Defense command and control at all times.

d. The pre-positioning of Federal military forces for CDO shall not exceed a battalion-sized unit in a single location unless a larger force is authorized by the President.

e. DoD Components shall not take charge of any function of civil government unless absolutely necessary under conditions of extreme emergency (e.g., when using emergency authority as described in Reference (c) and subparagraph 1.b.(3) of Enclosure 3). Any commander who is directed, or undertakes, to control such functions shall strictly limit DoD actions to emergency needs and shall facilitate the reestablishment of civil responsibility at the earliest time possible.

3. CDO PLANNING

a. To ensure essential control and sound management of all Federal military forces employed in CDO, centralized direction from the Secretary of Defense, through the ASD(HD&GS), shall guide planning by the DoD Components, whether alone or with civil authorities. Execution of CDO missions shall be decentralized through the Commanders of USNORTHCOM, USINDOPACOM, or USSOCOM, or through joint task force commanders, and only when specifically directed by the Secretary of Defense or as described in subparagraph 1.b.(3) of Enclosure 3.

b. The Commanders of USNORTHCOM, USINDOPACOM, and USSOCOM, as the DoD planning agents for CDO in accordance with section 11 of Enclosure 2, shall lead the CDO planning activities of the DoD Components in these areas:

(1) USNORTHCOM. The 48 contiguous States, Alaska, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

(2) USINDOPACOM. Hawaii and the U.S. possessions and territories in the Pacific area.

(3) USSOCOM. CDO activities involving special operations forces.

c. CDO plans and readiness measures shall foster efficient employment of Federal equipment controlled by NG forces, whether employed under State or Federal authority, and other resources of the DoD Components.

4. ROLE OF THE NG

a. NG forces in a State active duty status have primary responsibility to support State and local Government agencies for disaster responses and in domestic emergencies, including in response to civil disturbances; such activities would be directed by, and under the command and control of, the Governor, in accordance with State or territorial law and in accordance with Federal law.

b. NG forces may be ordered or called into Federal service to ensure unified command and control of all Federal military forces for CDO when the President determines that action to be necessary in extreme circumstances.

c. Federal military forces shall conduct CDO in support of the AG or designee (unless otherwise directed by the President) to assist State law enforcement authorities. Federal military forces will always remain under the command and control of the President and Secretary of Defense. Federal military forces also could conduct CDO in concert with State NG forces under the command of a dual-status commander, if determined to be appropriate by the Secretary of Defense and the Governor(s) concerned, or in close coordination with State NG forces using direct liaison.

d. Chief, NGB, will coordinate the sharing of State contingency plans for the use of non-federalized NG forces in CDO roles between the responsible State Adjutants General and the responsible Combatant Commander.

5. COOPERATION WITH CIVIL AUTHORITIES

a. The AG shall receive and coordinate preliminary requests for CDO from civil authorities pursuant to sections 251-254 of Reference (d).

(1) Formal requests for CDO shall be addressed to the President.

(2) The AG may assign a component law enforcement agency of the Department of Justice, such as the FBI or Bureau of Alcohol, Tobacco, Firearms, and Explosives, to lead the operational response to a civil disturbance incident.

(3) The President may provide, through the AG or other Federal official, a personal representative to communicate the President's policy guidance to the military commander conducting CDO. That representative may augment, but shall not replace, the military chain of

command. In addition, an individual may be designated by the AG as the Senior Civilian Representative of the AG.

b. The ASD(HD&GS) shall represent DoD in coordinating CDO planning and execution with the Department of Justice, and other Federal and State law enforcement agencies, as appropriate.

6. APPROVAL AUTHORITY

a. The President is the approval authority for requests for assistance for CDO, except for emergency authority as provided in subparagraph 1.b.(3) of Enclosure 3 and in Reference (c).

b. If the President directs the use of Federal military forces for CDO, the ASD(HD&GS) and the CJCS shall provide advice to the Secretary of Defense regarding the employment of DoD personnel and resources to implement the direction of the President. Secretary of Defense approval of such employment shall be communicated to the Combatant Commanders through the CJCS.

c. The ASD(HD&GS) shall provide any request, contingency plan, directive, or order affecting the employment of special operations forces to the ASD(SO/LIC), who supervises the activities of those forces on behalf of the Secretary of Defense in accordance with DoDD 5111.10 (Reference (as)).

d. Additionally, the ASD(HD&GS), in coordination with the ASD(SO/LIC) for the employment of special operations forces, shall provide overall policy oversight of the employment of DoD personnel and resources for CDO responding to terrorist incidents and other similar events in coordination with the CJCS.

ENCLOSURE 5DOMESTIC EOD SUPPORT OF CIVILIAN LAW ENFORCEMENT AGENCIES

1. GUIDING STATUTORY REQUIREMENTS AND SUPPORTING POLICIES. DoD EOD personnel may provide immediate response for EOD support in support of civil authorities, when requested, in accordance with Reference (c) and may provide for disposition of military munitions in accordance with parts 260-270 of title 40, Code of Federal Regulations (Reference (at)).

2. DoD REQUIREMENTS

a. DoD personnel will not participate in search or seizure of ordnance as part of a civilian law enforcement investigation. DoD personnel may, as described in this enclosure, render safe military munitions and take possession of military munitions for appropriate disposition at the request of civilian law enforcement officials when such military munitions have already been discovered and seized by civilian law enforcement personnel.

b. DoD officials, including local military commanders, may provide EOD and explosive detection dog support to local civil authorities to save lives, prevent human suffering, and mitigate great property damage under imminently serious conditions in accordance with Reference (c). Guidance for planning and execution requirements for Combatant Commanders and the Military Departments in responding to DoD military munitions is found in DoD 6055.09-M-V7 (Reference (au)).

c. Such an immediate response may include actions to provide advice and assistance to civil authorities, when requested, in the mitigation, rendering safe, and disposition of suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat.

d. Military munitions, discarded military munitions, and UXO in an unauthorized location under the jurisdiction of public officials potentially present an imminent and substantial danger to public safety and health and to the environment, and may require an immediate EOD response.

(1) These conditions include:

(a) Items that were illegally removed from military installations.

(b) Military munitions that land off range.

(c) Munitions located on property formerly leased or owned by DoD (including manufacturing areas, pads, pits, basins, ponds, streams, burial sites, and other locations incident to such operations).

(d) Transportation accidents involving military munitions.

(e) Unauthorized public possession of military munitions.

(2) Military munitions found in the conditions in paragraph 2.d. should be considered extremely hazardous and should not be disturbed or moved until technically qualified EOD personnel assess and determine the hazard.

(3) DoD officials, including local military commanders:

(a) Will provide EOD support for military munitions, discarded military munitions, and UXO that have (or appear to have) DoD origins.

(b) May, in accordance with Reference (c), provide EOD support for military munitions or foreign ordnance that do not appear to have DoD origins found in the United States under the conditions in paragraph 2.d.

e. Rendering safe and disposing of improvised devices, non-military commercial explosives, or similar dangerous articles reported or discovered outside of DoD installations are primarily the responsibility of civil authorities. However, due to the potential lethality and danger to public safety, DoD EOD personnel may provide assistance upon request in accordance with Reference (c).

f. When responding to requests for assistance from civil authorities under immediate response authority pursuant to Reference (c), the closest capable EOD unit regardless of Military Service will provide support.

g. Requests from civil authorities for non-immediate DoD EOD support are subject to approval by the Secretary of Defense. Examples of non-immediate DoD EOD support include, but are not limited to, post-blast analysis, use of DoD material and equipment, and support of pre-planned events. Exceptions include those activities in support of the U.S. Secret Service that, in accordance with DoDD 3025.13 (Reference (av)), do not require Secretary of Defense approval and those activities undertaken in response to requests for technical assistance or assessment of military munitions that are performed solely for safety purposes.

h. DoD EOD forces providing support under immediate response authority under Reference (c) will also comply with Reference (at) and other applicable local, State, and Federal laws and regulations, including environmental laws and regulations.

i. The National Joint Operations and Intelligence Center (NJOIC) and the FBI's Strategic Information Operations Center shall be advised immediately of the recovery and disposition of military munitions, as well as responses to non-military munitions and explosives. DoD

Components also shall ensure that reports are submitted within 72 hours, in accordance with section 846 of Reference (n) and DoD Manual 5100.76 (Reference (aw)), to:

Bureau of Alcohol, Tobacco, Firearms, and Explosives
U.S. Bomb Data Center
99 New York Ave., N.E., 8S 295
Washington, DC 20226

3. PLANNING AND EXECUTION

a. Combatant Commanders will:

(1) Maintain situational awareness of all EOD elements in support of civil authorities, consolidate Service EOD incident reports, and provide to the ASD(HD&GS) and the ASD(SO/LIC) a monthly consolidated report highlighting:

(a) DoD EOD support of civil authorities, resources, and work-hours expended.

(b) Final determination of the item and the agency supported.

(c) Final disposition of the hazard and a cost estimate of the support provided.

(d) A status of reimbursement by the supported entity. Reimbursement will not be sought for EOD response to military munitions that have (or appear to have) DoD origins.

(2) Coordinate with the DoD Explosives Safety Board and the Executive Manager for EOD Training and Technology to ensure information sharing.

b. In situations where DoD EOD personnel are asked to provide support to the Department of Justice (DOJ)/FBI in conducting ECM, such personnel may only employ ECM in the United States if approved by the Secretary of Defense and in accordance with the DOJ program for applying ECM in the United States in response to threats of radio-controlled improvised explosive devices (DOJ Federal ECM Program) approved by the National Telecommunications and Information Administration (NTIA) (see Section 7.25 of the NTIA Manual of Regulations and Procedures for Federal Radio Frequency Management (Reference (ax))). NTIA has approved the use of DoD military ECM assets in support of the DOJ Federal ECM Program; however, only those DoD military ECM assets/systems that have been approved by NTIA for employment in the United States under the DOJ Federal ECM Program may be used by DoD EOD personnel in providing the requested support to DOJ/FBI.

(1) DoD officials may provide ECM equipment, and expert advice regarding the FBI's use of the equipment, in accordance with section 2 of this enclosure when the FBI has approved use of ECM and when there is insufficient time to obtain Secretary of Defense approval.

(2) All use of ECM equipment or devices while conducting EOD operations supporting civil authorities will be coordinated with and follow procedures established by the FBI's Strategic Information Operations Center and reported to the NJOIC.

c. In consideration of the Military Departments' and the Combatant Commanders' planning requirements and in consultation with appropriate local civilian agencies, installation commanders will identify off-installation critical infrastructure and key resources, such as nuclear power stations, power plants, communications hubs, and water treatment plants. Combatant Commanders and other responsible DoD officials will assist in developing priorities for EOD support of civil authorities. Installations without resident EOD forces will develop plans to seek support from the nearest DoD EOD organization.

d. Combatant Commanders, as appropriate, will maintain situational awareness of all EOD elements in support of civil authorities, coordinate and de-conflict Military Services' EOD domestic areas of response, and develop consolidated reporting procedures to permit accurate and timely collection of data from the supporting Services.

e. Service EOD reports shall be used to indicate that DoD is reclaiming accountability of DoD military munitions that were found outside the custody of DoD. The Military Departments will forward reports of reclaimed military munitions to installations for ammunitions logistics management and submission to the DoD Explosives Safety Board in accordance with References (au) and (aw), and DoDI 5160.68 (Reference (ay)).

f. Reimbursement is not required for EOD support involving military munitions, discarded military munitions, and UXO that have DoD origins or appear to have DoD origins. Combatant Commanders will coordinate with the DoD Explosives Safety Board and the Executive Manager for EOD Training and Technology to ensure information sharing.

g. In accordance with DoDI 6055.17 (Reference (az)) and applicable Military Department issuances, commanders of EOD organizations will:

(1) Coordinate with installation emergency managers to:

(a) Establish local processes and procedures to respond to and report military and non-military munitions support requests from civilian law enforcement agencies.

(b) Determine priorities of EOD support for protecting critical infrastructure and key resources when requested.

(2) Participate in installation emergency response exercises.

(3) Determine training requirements for conducting DSCA response missions.

4. COOPERATION WITH CIVIL AUTHORITIES

a. DoD EOD forces will maintain relationships with local, State, tribal, and other Federal bomb disposal and other law enforcement agency assets near their geographical locations. Such relationships may include conferences and training exercises to increase the interoperability and integration with local bomb squad agencies, to improve the response capabilities to civil authorities when requested, and to enhance the consolidated response capabilities.

b. DoD EOD personnel may conduct UXO and explosive ordnance awareness and education programs that inform and promote public safety of the hazards associated with military munitions and explosive items.

ENCLOSURE 6DOMESTIC TERRORIST INCIDENT SUPPORT

1. DoD GUIDANCE. Only the Secretary of Defense may authorize the use of DoD personnel in support of civilian law enforcement officials during a domestic terrorism incident, except as described in paragraph 1.b. of this enclosure. The Commanders of USNORTHCOM, USINDOPACOM, and USSOCOM, in coordination with the CJCS, ASD(HD&GS), and ASD(SO/LIC), have primary responsibility for all military preparations and -- when authorized by the Secretary of Defense -- operations, including the employment of armed Federal military forces at the scene of any domestic terrorist incident.

a. In discharging those functions, the Commanders of USNORTHCOM, USINDOPACOM, and USSOCOM shall operate in a manner consistent with law enforcement policies established by the AG.

b. When a terrorist incident develops that has a potential for military involvement, the Commanders of USNORTHCOM, USINDOPACOM, and USSOCOM may dispatch military observers to the incident site, with the concurrence of the senior FBI official at the site, to appraise the situation before any decision is made by the Secretary of Defense to commit Federal military forces. Any dispatch of U.S. counterterrorism forces as observers must be specifically authorized by the Secretary of Defense through the CJCS.

2. REQUIREMENT FOR VOCAL ORDERS TO BE PUBLISHED. When the Secretary of Defense authorizes U.S. counterterrorism forces to assist with the resolution of a domestic terrorist incident, the CJCS shall issue the appropriate order on behalf of the Secretary of Defense. That order shall designate the command relationships for the deploying forces.

ENCLOSURE 7USE OF INFORMATION COLLECTED DURING DoD OPERATIONS

1. ACQUISITION AND DISSEMINATION. DoD Components are encouraged to provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military operations that may be relevant to a violation of State or Federal law within the jurisdiction of such officials, except as described in subparagraph 1.g.(2) of Enclosure 3 of this Instruction. The DoD Components shall prescribe procedures for releasing information upon reasonable belief that there has been such a violation.

a. The assistance provided shall be in accordance with DoD 5400.11-R (Reference (ba)) and with section 271 of Reference (d) and other applicable laws.

b. The acquisition and dissemination of information under this enclosure shall be in accordance with DoDD 5200.27 (Reference (bb)), Reference (ar), and, for DoD intelligence components, Reference (j).

c. The DoD Components shall establish procedures for "routine use" disclosures of such information in accordance with Reference (ay) and DoDD 5400.11 (Reference (bc)).

d. Under guidance established by the DoD Components concerned, the planning and execution of compatible DoD training and operations shall, to the maximum extent practicable, take into account the needs of civilian law enforcement officials for information when the collection of the information is an incidental aspect of training or operations performed by Federal military forces consistent with section 271 of Reference (d).

e. The needs of civilian law enforcement officials shall, to the maximum extent practicable, be considered when scheduling routine training missions, consistent with section 271 of Reference (d). This does not permit the planning or creation of missions or training for the primary purpose of aiding civilian law enforcement officials, and it does not permit conducting training or missions for the purpose of routinely collecting information about U.S. citizens.

f. Civilian law enforcement agents may accompany routinely scheduled training flights as observers for the purpose of collecting law enforcement information. This provision does not authorize the use of DoD aircraft to provide point-to-point transportation and training flights for civilian law enforcement officials. Such assistance may be provided only in accordance with Reference (ak).

g. Intelligence information held by the DoD Components and relevant to drug interdiction or other civilian law enforcement matters shall be provided promptly to appropriate civilian law enforcement officials, unless sharing that information is determined by the head of that DoD Component to be inconsistent with national security. Under procedures established by the DoD Components concerned, information concerning illegal drugs that is provided to civilian law

enforcement officials under provisions of Reference (j) shall also be provided to law enforcement officials at the El Paso Intelligence Center.

h. Nothing in this section modifies DoD procedures for dissemination of information for foreign intelligence or counterintelligence purposes.

i. The DoD Components are encouraged to participate in the Department of Justice law enforcement coordinating committees situated in each Federal judicial district.

j. The assistance provided under this enclosure may not include or permit direct participation by DoD personnel in the interdiction of a vessel, aircraft, or land vehicle, or in a search, seizure, arrest, or other similar activity, unless the member's participation in such activity is otherwise authorized by law in accordance with paragraph 1.b. of Enclosure 3 of this Instruction.

2. MILITARY READINESS. Information shall not be provided under this enclosure if it could adversely affect military preparedness of the United States.

ENCLOSURE 8USE OF DoD EQUIPMENT AND FACILITIES

1. EQUIPMENT AND FACILITIES. The DoD Components may make equipment, base facilities, or research facilities available to Federal, State, or local civilian law enforcement officials for law enforcement purposes in accordance with the guidance in this enclosure.

a. The ASD(HD&GS) shall issue guidance to ensure that the assistance provided under this enclosure is in accordance with applicable provisions of law, including:

(1) Sections 272, 277, 2576, and 2667 of Reference (d).

(2) Section 1535 of title 31, U.S.C. (also known and referred to in this Instruction as "The Economy Act, as amended" (Reference (bd))) and sections 6501-6508 of title 31, U.S.C. (also known as "The Intergovernmental Cooperation Act of 1968, as amended" (Reference (bd))).

(3) Title 40, U.S.C. (Reference (be)).

(4) Sections 102-103, 105-115, 151-153, 3101, 3105, 3301, 3303-3305, 3509, 3901, 3905-3906, 4501-4506, 4701, and 6101 of title 41, U.S.C. (Reference (bf)).

(5) Chapters 21, 25, 29, and 31 of title 44, U.S.C. (Reference (bg)).

b. The ASD(HD&GS) guidance shall also ensure compliance with DoDI 4165.70 and DoDD 5410.12 (References (bh) and (bi)), and other guidance that may be issued by the Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense.

2. LIMITATIONS ON THE USE OF PERSONNEL. The DoD Components shall follow the guidance in paragraph 1.d. of Enclosure 3 of this Instruction in considering requests for DoD personnel to operate or maintain, or to assist in operating or maintaining, equipment made available according to section 1 of this enclosure.

3. MILITARY READINESS. Assistance may not be provided under this enclosure if such assistance could adversely affect military preparedness. Each request shall be evaluated using the criteria provided in Reference (c) for evaluating legality, lethality, risk, cost, appropriateness, and readiness. The implementing documents issued by the DoD Components shall ensure that approval for the disposition of equipment is vested in officials who can assess the effect of such disposition on military preparedness.

4. APPROVAL AUTHORITY

a. Requests by civilian law enforcement officials for DoD assistance for the use of DoD equipment and facilities shall be forwarded to the appropriate approval authority under the guidance in this section. All requests, including those in which subordinate authorities recommend denial, shall be submitted promptly to the approving authority. Requests will be forwarded and processed according to the urgency of the situation.

(1) Requests for the use of equipment or facilities outside the United States, other than for arms, ammunition, combat vehicles, vessels, and aircraft, shall be considered in accordance with procedures established by the applicable DoD Component.

(2) Requests from other Federal agencies to purchase equipment (permanent retention) from a DoD Component, that are accompanied by appropriate funding documents, may be submitted directly to the DoD Component concerned.

(3) Requests for training, expert advice, or use of personnel to operate or maintain equipment shall be forwarded in accordance with section 5 of Enclosure 3 of this Instruction.

(4) For loans pursuant to Reference (bd), which are limited to agencies of the Federal Government, and for leases pursuant to section 2667 of Reference (d), which may be made to entities outside the Federal Government, this guidance applies:

(a) Requests for arms, ammunition, combat vehicles, vessels, and aircraft shall be submitted to the Secretary of Defense for approval.

(b) Requests for loan or lease or other use of equipment or facilities are subject to approval by the heads of the DoD Components, unless approval by a higher official is required by statute or DoD issuance applicable to the particular disposition.

b. The Heads of the DoD Components shall issue implementing policy and direction for taking action on requests for loan, lease, or other use of equipment or facilities that are not governed by subparagraphs 4.a.(4)(a) and 4.a.(4)(b) of this enclosure. Such implementing policy and direction shall ensure compliance with applicable law and DoD issuances, including requiring specific levels of approval with respect to particular dispositions.

ENCLOSURE 9FUNDING

1. GENERAL. Reimbursement is required when equipment or services are provided to agencies outside DoD.

a. The primary sources of reimbursement requirements are the Economy Act, as amended, for provision of equipment or services to Federal departments and agencies and section 2667 of Reference (d). Section 277 of Reference (d) requires reimbursement unless the Secretary of Defense elects to waive reimbursement using the criteria described in subparagraph 2.c. of this enclosure.

b. Other statutes may apply to particular types of assistance or may apply to assistance to specific civilian law enforcement agencies. Payment of fair market value under section 2667 of Reference (d) may only be waived under the provisions of section 2667 of Reference (d).

c. A requirement for reimbursement does not apply when DoD Components provide information, collected during the normal course of military training or operations, to Federal, State, or local civilian law enforcement officials pursuant to section 271 of Reference (d).

2. PROCEDURAL REQUIREMENTS

a. Defense support of civilian law enforcement agencies is normally an unprogrammed requirement for DoD. DoD 7000.14-R (Reference (bj)) prescribes procedures for financing and reporting costs. DoD Components shall comply with these procedures and shall consider the factors presented in paragraph 2.c. of this enclosure to determine or recommend whether financing is to be accomplished on a reimbursable or non-reimbursable basis.

b. The Commanders of USNORTHCOM, USINDOPACOM, and USSOCOM shall serve as the financial managers responsible for DoD oversight of all operations executed in their areas of responsibility in accordance with section 11 of Enclosure 2 of this Instruction.

c. The Secretary of Defense may waive reimbursement for DoD support to civilian law enforcement agencies provided pursuant to chapter 15 of Reference (d), or support provided by NG personnel performing duty pursuant to section 502(f) of Reference (l), in accordance with section 277 of Reference (d), if such support:

(1) Is provided in the normal course of DoD training or operations; or

(2) Results in a benefit to the DoD element or the NG personnel providing the support that is substantially equivalent to that which would otherwise be obtained from military operations or training.

DoDI 3025.21, February 27, 2013

d. The ASD(HD&GS) may waive reimbursement of NG in Title 32 status up to \$500,000 in accordance with Reference (c).

3. PERSONNEL DUTY STATUS. Funding for State active duty of NG personnel is the responsibility of the State involved.

GLOSSARYPART I. ABBREVIATIONS AND ACRONYMS

AG	Attorney General of the United States
ASD(HD&GS)	Assistant Secretary of Defense for Homeland Defense and Global Security
ASD(SO/LIC)	Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict and Interdependent Capabilities
ASD(M&RA)	Assistant Secretary of Defense for Manpower and Reserve Affairs
CDO	civil disturbance operations
CJCS	Chairman of the Joint Chiefs of Staff
DoDI	DoD Instruction
DoDD	DoD Directive
DOJ	Department of Justice
DSCA	defense support of civil authorities
ECM	electronic counter measures
EOD	explosive ordnance disposal
FBI	Federal Bureau of Investigation
IED	improvised explosive device
IG, DoD	Inspector General of the Department of Defense
MOUT	military operations in urban terrain
NG	National Guard
NGB	National Guard Bureau
NJOIC	National Joint Operations and Intelligence Center
NTIA	National Telecommunications and Information Administration
U.S.C.	United States Code
USD(I)	Under Secretary of Defense for Intelligence

USD(P)	Under Secretary of Defense for Policy
USD(P&R)	Under Secretary of Defense for Personnel and Readiness
USNORTHCOM	United States Northern Command
USINDOPACOM	United States Indo-Pacific Command
USSOCOM	United States Special Operations Command
UXO	unexploded explosive ordnance

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this Instruction.

civil authorities. Defined in the DoD Dictionary of Military and Associated Terms (Reference (bk)).

civil disturbance. Defined in Reference (bk).

civilian law enforcement official. An officer or employee of a civilian Federal, State, local, and tribal law enforcement agency with responsibility for enforcement of the laws within the jurisdiction of that agency. This term and its definition are proposed for inclusion in Reference (bk).

DoD personnel. Federal military officers and enlisted personnel and civilian employees of the Department of Defense.

domestic emergencies. Defined in Reference (bk).

emergency authority. Defined in Reference (c).

explosives or munitions emergency. A situation involving the suspected or detected presence of UXO, damaged or deteriorated explosives or munitions, an IED, other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat (Reference (at)).

law enforcement agency. Defined in Reference (bk).

APPENDIX E

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DoD INSTRUCTION 5505.03

INITIATION OF INVESTIGATIONS BY DEFENSE CRIMINAL INVESTIGATIVE ORGANIZATIONS

Originating Component: Office of Inspector General of the Department of Defense

Effective: August 2, 2023

Releasability: Cleared for public release. Available on the Directives Division Website at <https://www.esd.whs.mil/DD/>.

Reissues and Cancels: DoD Instruction 5505.03, "Initiation of Investigations by Defense Criminal Investigative Organizations," March 24, 2011, as amended

Approved by: Robert P. Storch, Inspector General of the Department of Defense

Purpose: In accordance with the authority in DoD Directive (DoDD) 5106.01, this issuance:

- Establishes policy, assigns responsibilities, and provides procedures to ensure the independence, objectivity, and effectiveness of the Defense Criminal Investigative Organizations (DCIOs).
- Pursuant to Section 1732(b) of Public Law 113-66, establishes a uniform process to record the results of DCIO investigations of alleged violations of the Chapter 47 of Title 10, United States Code, also known and referred to in this issuance as the "Uniform Code of Military Justice."
- Requires DCIOs to identify a DoD nexus when initiating a criminal or civil investigation or conducting investigative activities.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY.

a. This issuance applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).

b. Nothing in this issuance will infringe on the IG DoD’s or the Defense Intelligence Component Inspectors General’s statutory independence and authority in accordance with Chapter 4 of Title 5, United States Code, also known and referred to in this issuance as the “Inspector General Act of 1978,” as amended. In the event of any conflict between this issuance and the IG DoD or the Defense Intelligence Component Inspectors General’s statutory independence and authority, the Inspector General Act of 1978 takes precedence.

1.2. POLICY.

a. The DCIOs will initiate investigations in accordance with law and governing regulations. Commanders and other leaders not assigned to the DCIOs must not impede or interfere with investigations or investigative techniques deemed appropriate by the DCIOs.

(1) The Defense Criminal Investigative Service (DCIS) operates under the direction and control of the IG DoD and the Deputy Inspector General for Investigations.

(2) The Military Criminal Investigative Organizations (MCIOs) operate under the direction and control of the Secretary of the Military Department concerned and the MCIO’s director or commander.

b. Investigations initiated by the DCIOs have primacy over collateral investigations conducted by commanders, safety investigators, and other organizational entities. Collateral investigations will not interfere with or otherwise hinder DCIO investigations.

c. DCIO investigation reports will be fact-based and impartial for prosecutorial, civil, administrative, or other appropriate action.

d. DCIOs may initiate a criminal or civil investigation or conduct investigative activities when the DCIO is first able to identify a DoD nexus. The requirement for a DoD nexus to investigate may differ from jurisdiction to prosecute by appropriate Federal or military authorities. Examples of DoD nexus include a reasonable likelihood of one of the following:

(1) The crime occurred on or against a DoD installation, facility, aircraft, vehicle, or vessel.

(2) DoD resources, equipment, programs, or operations were used in the commission of the crime or affected by the commission of the crime.

(3) A DoD entity, DoD civilian employee, Service member, or dependent was the victim of the crime when the offense falls within the DCIO's investigative jurisdiction.

(4) The subject or the target of the investigation is currently affiliated with the DoD, was affiliated with the DoD at the time of the offense, or is subject to the Uniform Code of Military Justice.

(5) The investigation actions were authorized by Paragraph 1.b. of Enclosure 3 of DoD Instruction (DoDI) 3025.21.

(6) With concurrence of the applicable DCIO:

(a) When the senior mission commander or battle space commander requests a criminal or civil investigation to support the DoD mission for contingency operations; or

(b) When there is a need to investigate crimes committed against a DoD entity, DoD civilian employee, Service member, or dependent or by a person or persons or other entities that are subject to the Uniform Code of Military Justice or Chapter 212 of Title 18, United States Code, also known as the "Military Extraterritorial Jurisdiction Act of 2000."

1.3. INFORMATION COLLECTIONS.

a. All DCIOs will maintain an automated records management and information system that is compliant with the Federal Bureau of Investigation's National Incident-Based Reporting System and National Data Exchange and the Law Enforcement Defense Data Exchange compatibility.

b. The automated records management system will be compliant with records management requirements specified in DoDIs 5015.02 and 5525.16.

c. The criminal and civil investigation reporting, referred to throughout this issuance, does not require licensing with a report control symbol in accordance with Paragraphs 1.b.(6) and 1.b.(7) of Enclosure 3 of Volume 1 of DoD Manual 8910.01.

SECTION 2: RESPONSIBILITIES

2.1. IG DOD.

The IG DoD monitors and evaluates compliance of DoD Components with this issuance.

2.2. SECRETARIES OF THE MILITARY DEPARTMENTS.

In addition to the responsibilities in Paragraph 2.3., the Secretaries of the Military Departments:

- a. Establish policy and procedures to implement this issuance.
- b. Resolve subordinate commander objections to DCIO initiation of criminal or civil investigations.
- c. Direct subordinate commanders not to impede DCIO criminal or civil investigations.

2.3. DOD COMPONENT HEADS.

The DoD Component heads ensure compliance with this issuance and prescribe additional Component procedures as necessary to implement its policy.

SECTION 3: PROCEDURES

3.1. INITIATING A CRIMINAL OR CIVIL INVESTIGATION.

Commanders at all levels must ensure that criminal allegations or suspected criminal allegations involving persons affiliated with the DoD or any property or programs under their control or authority are referred to the appropriate DCIO or law enforcement organization as soon as possible.

a. Any commander or the IG DoD may request that a DCIO initiate a criminal or civil investigation. However, the DCIO directors and commanders are not required to and will not solicit authorizations to initiate investigations from commanders or any other authority outside the DCIO. In each case, the decision to initiate an investigation remains solely with the DCIO and the DCIO's directing and controlling authority. DCIOs can discuss the initiation of an investigation with the Secretary of Defense or the Secretary of the Military Department concerned, IG DoD, or commanders.

b. When a commander not assigned to the DCIO objects to the initiation of a criminal or civil investigation for any reason and wishes to stop the investigation, that commander will need to promptly report the circumstances through their chain of command to the Secretary of the Military Department concerned or the IG DoD, as appropriate. Delegated subordinate commanders may resolve those matters that were the basis for the objection, thereby negating the need to notify the Secretary of the Military Department concerned or the IG DoD.

c. Criminal and civil investigations and operations must have a DoD nexus when initiated. In cases where a DoD nexus cannot immediately be identified, DCIO investigative activities will be limited to steps intended to develop sufficient information to assess whether a nexus exists. When a DoD nexus cannot be identified, DCIO agents must discontinue investigative activities and refer allegations to the appropriate civilian law enforcement agency.

d. For specific jurisdictional questions, DCIOs will consult with appropriate legal counsel.

3.2. DELAYING, SUSPENDING, OR TERMINATING A CRIMINAL OR CIVIL INVESTIGATION.

a. Only the Secretary of Defense or Secretary of a Military Department may direct an MCIO to delay, suspend, or terminate an ongoing investigation other than an investigation being conducted at the request of the IG DoD.

b. Except for the Secretary of Defense operating in accordance with Section 408 of the Inspector General Act of 1978, only the IG DoD may direct a DCIO to delay, suspend, or terminate an ongoing investigation being conducted at the direction of the IG DoD.

c. When there is a request to delay, suspend, or terminate an ongoing MCIO investigation, the Secretary of the Military Department concerned will promptly decide whether the investigation will be discontinued. No investigation will be delayed or suspended while a review

of the request is ongoing, except by decision of the Secretary of the Military Department concerned. The Secretaries of the Military Departments will promptly report to the IG DoD the facts in all cases brought to them for resolution and their decision in each instance.

d. When a request to delay, suspend, or terminate an ongoing DCIS investigation is raised to the Secretary of a Military Department, that request will promptly be referred to the IG DoD. When appropriate, the IG DoD will make a prompt decision on those matters and inform the Secretary of the Military Department concerned.

e. When there is a request to delay, suspend, or terminate an ongoing DCIO investigation that was initiated at the direction of the IG DoD, the Secretary of the Military Department concerned will promptly refer that request to the IG DoD. The IG DoD will make a prompt decision on those matters and inform the Secretary of the Military Department concerned.

3.3. IMPEDING AN INVESTIGATION.

a. Commanders will not impede an investigation or the use of investigative techniques that a DCIO considers necessary and that are permissible in accordance with law or regulation. DCIO directors or commanders will promptly report through their chain of command to the Secretary of the Military Department concerned or the IG DoD, as appropriate, the facts in all situations where attempts are made to impede an investigation or the use of investigative techniques.

b. When attempts are made to impede an investigation or the use of investigative procedures or techniques by a DCIO:

(1) And the investigation has been initiated by a DCIO, the Secretary of the Military Department concerned will promptly resolve those situations and provide the IG DoD with a copy of the report and the resolution of all such impediments brought to the Secretary of the Military Department concerned.

(2) And the investigation has been initiated by or at the direction of the IG DoD, the Secretary of the Military Department concerned will promptly provide a copy of the report to the IG DoD. The IG DoD and the Secretary of the Military Department concerned will resolve those matters.

3.4. ADULT, PRIVATE, CONSENSUAL SEXUAL MISCONDUCT INVESTIGATIONS.

An MCIO may initiate an investigation into adult, private, consensual sexual misconduct (e.g., extramarital sexual conduct) with or without a request from the Service member's commander. The MCIO will only initiate an adult, private, consensual sexual misconduct investigation when the MCIO commander, director, or deputy director determines there is credible information a crime was committed and the investigation will be an appropriate use of investigative resources.

3.5. SENIOR OFFICIAL INVESTIGATIONS.

In accordance with DoDD 5505.06, allegations of misconduct against senior officials will be reported to the IG DoD within 5 workdays of receipt by a DoD Component. Except in unusual circumstances, the IG DoD will promptly notify the appropriate DoD Component head(s) when an allegation is received. The appropriate DCIO will investigate allegations of criminal misconduct against senior officials of which the DCIO becomes aware that occur within their jurisdiction.

3.6. RESOURCES.

DCIO requests for resources, personnel, or facilities not under the DCIO's command or control which the DCIO needs to accomplish its mission will be coordinated through normal command and resource processes for approval of the commander having responsibility for the requested resources.

3.7. INVESTIGATION REPORTS.

a. In accordance with Section 1732(b) of Public Law 113-66, at the conclusion of the investigation, the DCIOs will only report and document final investigative facts. To avoid the appearance of investigative bias, DCIOs must not convey or document investigative conclusions, whether founded or unfounded, in investigation reports.

b. DCIOs must document legal coordination from supporting legal counsel or staff judge advocates about an investigation in the final investigation report.

c. DCIOs must document all investigative activity relating to an investigation in the final investigation report or corresponding file.

d. DCIOs must ensure records and information created concerning investigations, allegations, suspected criminal allegations, misconduct, and resulting investigation reports are retained in accordance with DoDI 5015.02 and DoD Component records management disposition schedules, policies, procedures, and authorized retention disposition authorities.

e. In accordance with DoDD 5205.16 and DoDI 5505.17, DCIOs must provide law enforcement information to DoD Components that require the information to detect and mitigate insider threats and to make debarment, security clearance eligibility, special access suitability, and other administrative determinations.

f. DoD Components receiving investigation reports, as specified in Paragraph 3.7.e., must not make a law enforcement record a permanent part of its system of records without prior coordination with the originating law enforcement agency.

GLOSSARY

G.1. ACRONYMS.

ACRONYM	MEANING
DCIO	Defense Criminal Investigative Organization
DCIS	Defense Criminal Investigative Service
DoDD	DoD directive
DoDI	DoD instruction
IG DoD	Inspector General of the Department of Defense
MCIO	Military Criminal Investigative Organization

G.2. DEFINITIONS.

Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

TERM	DEFINITION
adult, private, consensual sexual misconduct	A sexual act or acts in violation of the Uniform Code of Military Justice, that occur(s) in private between consenting adults, whether on or off a military installation. It does not include any sexual act or acts that involve allegations by any party of force, coercion, intimidation, unconsciousness, or incapacitation; abuse of position or rank; fraternization; persons under the age of 16; or conduct that relates directly to applicable security standards for access to classified information.
commander	A commissioned officer or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a DoD organization or prescribed territorial area. For purposes of this issuance, all references to “commander” also include the military and civilian heads of DoD organizations that are not part of a DCIO, and are authorized to request an investigation or act on the results of an investigation by a DCIO.
credible information	Defined in DoDI 5505.07.
DCIO	The Department of the Army Criminal Investigation Division, Naval Criminal Investigative Service, Air Force Office of Special Investigations, and DCIS.

TERM	DEFINITION
dependent	Defined in DoD 7000.14-R, Volume 7A.
DoD nexus	A connection to DoD in accordance with parameters outlined in Paragraph 1.2.d.
jurisdiction	Authority granted to a legal entity to make legal decisions or to an investigative entity to investigate criminal matters.
Law Enforcement Defense Data Exchange	DoD system for reporting criminal incident information to the National Data Exchange system. A database that shares criminal data between the DCIOs and other DoD law enforcement agencies and makes law enforcement data available to support non-law enforcement functions with a defined requirement and need for the information.
MCIO	The Department of the Army Criminal Investigation Division, Naval Criminal Investigative Service, and Air Force Office of Special Investigations.
senior official	Defined in DoDD 5505.06.

REFERENCES

- DoD 7000.14-R, Volume 7A, "Department of Defense Financial Management Regulation (DoD FMR): Military Pay Policy – Active Duty and Reserve Pay," date varies by chapter
- DoD Directive 5106.01, "Inspector General of the Department of Defense (IG DoD)," April 20, 2012, as amended
- DoD Directive 5205.16, "The DoD Insider Threat Program," September 30, 2014, as amended
- DoD Directive 5505.06, "Investigations of Allegations Against Senior DoD Officials," June 6, 2013, as amended
- DoD Instruction 3025.21, "Defense Support of Civilian Law Enforcement Agencies," February 27, 2013, as amended
- DoD Instruction 5015.02, "DoD Records Management Program," February 24, 2015, as amended
- DoD Instruction 5505.17, "Collection, Maintenance, Use, and Dissemination of Personally Identifiable Information and Law Enforcement Information by DoD Law Enforcement Activities," December 19, 2012, as amended
- DoD Instruction 5525.16, "Law Enforcement Defense Data Exchange (LE D-DEX)," August 29, 2013, as amended
- DoD Manual 8910.01, Volume 1, "DoD Information Collections Manual: Procedures for DoD Internal Information Collections," June 30, 2014, as amended
- Public Law 113-66, Section 1732(b) "National Defense Authorization Act for Fiscal Year 2014," December 26, 2013
- United States Code, Title 5, Chapter 4 (also known as the "Inspector General Act of 1978," as amended)
- United States Code, Title 10, Chapter 47 (also known as the "Uniform Code of Military Justice")
- United States Code, Title 18, Chapter 212 (also known as the "Military Extraterritorial Jurisdiction Act of 2000")

APPENDIX F

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DoD INSTRUCTION 5505.21

CHILD SEXUAL EXPLOITATION INVESTIGATIONS IN THE DoD

Originating Component: Office of Inspector General of the Department of Defense

Effective: May 22, 2025

Releasability: Cleared for public release. Available on the Directives Division Website at <https://www.esd.whs.mil/DD/>.

Approved by: Steven A. Stebbins, Acting Inspector General of the Department of Defense

Purpose: In accordance with the authority in DoD Directive 5106.01, this issuance:

- Establishes policy, assigns responsibilities, and provides procedures for investigating and combating child sexual exploitation (CSE) within the DoD, in accordance with the authority in Chapter 4 of Title 5, United States Code (U.S.C.) (also known as the "Inspector General Act of 1978," as amended).
- Implements:
 - Section 550D of Public Law (PL) 116-92 (accompanied as a note with Chapter 80 of Title 10, U.S.C.).
 - Section 534 of PL 118-31 (amends Section 550D of PL 116-92 with additional requirements, accompanied as a note with Chapter 80 of Title 10, U.S.C.). This is referred to as "Section 550D" throughout this issuance.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY.

This issuance applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).

1.2. POLICY.

a. The military criminal investigative organizations (MCIOs) will initiate a criminal investigation in response to allegations of CSE-related criminal offenses of which they become aware that occur within their jurisdiction, but only when such allegations are based on credible information that a crime has occurred, and have a DoD nexus, as defined in DoD Instruction (DoDI) 5505.03.

b. The MCIOs are the only DoD law enforcement organizations within the DoD authorized to investigate CSE-related criminal offenses.

c. The MCIOs will refer allegations of CSE-related criminal offenses they receive to the appropriate Federal, State, or local law enforcement agency when the reported offenses are not within the MCIOs’ investigative jurisdiction.

d. The MCIOs are permitted to conduct proactive operations to prevent or combat CSE, but only when such operations target potential subjects that are within the MCIOs’ investigative jurisdiction or when there is a known DoD nexus. The MCIOs must consult with supporting legal counsel before conducting any CSE combative operations or participating in any such operations as part of a Federal, State, or local task force to ensure the activity will not violate Section 1385 of Title 18, U.S.C., also known and referred to in this issuance as the “Posse Comitatus Act.”

e. The MCIOs are not permitted to conduct CSE combative operations or participate in a task force that targets potential subjects when there is no known DoD nexus or when it could violate the Posse Comitatus Act.

f. The MCIOs must submit any visual depiction of sexually explicit conduct involving a minor discovered during an investigation to the National Center for Missing and Exploited Children in accordance with the National Center for Missing and Exploited Children’s submission procedures.

1.3. RECORDS MANAGEMENT.

a. All DoD law enforcement organizations must maintain an automated records management and information system that is compliant and compatible with the Federal Bureau of Investigation's National Incident-Based Reporting System, National Data Exchange System, and the Law Enforcement Defense Data Exchange.

b. The DoD will develop automated records management systems in accordance with DoD Manual 8180.01 and compliant with records management requirements specified in DoDIs 5015.02 and 5525.16.

SECTION 2: RESPONSIBILITIES

2.1. IG DOD.

In addition to the responsibilities in Paragraph 2.4., the IG DoD oversees and evaluates, as the IG DoD considers appropriate, DoD Component compliance with this issuance.

2.2. UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE AND SECURITY (USD(I&S)).

In addition to the responsibilities in Paragraph 2.4., the USD(I&S), as the designated Principal Staff Assistant for law enforcement:

- a. May monitor DoD Component execution of this issuance.
- b. Establishes, reviews, and coordinates on training and training requirements related to this issuance and as required by Section 550D.
- c. Monitors DoD Component resourcing to implement this issuance and advocates for any changes to that resourcing.
- d. Collects information from the MCIOs and provides annual reports to the Committees on Armed Services of the Senate and the House of Representatives that detail specific actions that have been taken or that are planned to be taken to detect, combat, and stop the use of the DoD network to further CSE in accordance with Section 550D and as specified in Paragraph 3.5.

2.3. SECRETARIES OF THE MILITARY DEPARTMENTS.

In addition to the responsibilities in Paragraph 2.4., the Secretaries of the Military Departments ensure:

- a. Adequate resources are continuously available to support MCIO investigations and CSE combative operations.
- b. Sufficient MCIO personnel are trained and available to investigate and combat CSE in accordance with Section 550D.
- c. MCIO personnel provide information to the USD(I&S) to support annual reporting requirements as specified in Section 550D.
- d. MCIO personnel submit any visual depiction of sexually explicit conduct involving a minor discovered during an investigation to the National Center for Missing and Exploited Children in accordance with the National Center for Missing and Exploited Children's submission procedures.

2.4. OSD AND DOD COMPONENT HEADS.

The OSD and DoD Component heads ensure their Component:

- a. Complies with this issuance and prescribes additional procedures, as necessary, to implement its policy.
- b. Immediately reports all allegations of CSE with a DoD nexus within their Component to the responsible MCIO.
- c. Maintains records and information established and created in accordance with this issuance, DoDI 5015.02, and DoD Component records disposition schedules.

SECTION 3: GENERAL PROVISIONS

3.1. DOD COLLABORATION AND NOTIFICATION REQUIREMENTS.

The MCIO criminal investigators assigned to a CSE-related offense investigation will complete all applicable victim support collaboration and notification procedures in accordance with DoDIs 5505.19, 6400.01, 6400.06, and Volume 1 of DoDI 6495.02.

3.2. TRAINING.

a. The MCIO personnel assigned to investigate and combat CSE will be sufficiently trained to conduct such investigations and operations.

b. In accordance with Section 550D, MCIO personnel will be trained on:

(1) Technologies, tools, and techniques, including digital forensics, to support and enhance CSE investigations.

(2) Evidence-based forensic child victim interviewing skills or be knowledgeable of established procedures to obtain and use trained child advocacy support organization personnel for the child interviews.

(3) Requirements to refer child victims for trauma-informed mental and medical health care and other treatment and support services.

3.3. PARTNERSHIPS AND COLLABORATION.

a. The MCIOs will seek to enter partnerships and execute collaborative agreements with functional experts, including, as appropriate:

(1) Highly qualified national child protection organizations; or

(2) Law enforcement training centers with demonstrated expertise in the delivery of law enforcement training, to identify, investigate, and prosecute individuals engaged in online CSE.

b. The MCIO personnel assigned to investigate and combat CSE will collaborate with Federal, State, local, and other civilian law enforcement agencies to the extent authorized by law. The collaboration will include:

(1) Participating in task forces established by Federal, State, local, and other civilian law enforcement agencies for the purpose of preventing and combating CSE but such collaboration may only include active assistance to civilian law enforcement agencies when such task forces are targeting potential subjects that are within the MCIOs' investigative jurisdiction or when there is a known DoD nexus.

(2) Establishing cooperative agreements to facilitate co-training and other collaboration with such agencies.

(3) Ensuring that streamlined processes for the referral of CSE cases to other agencies and jurisdictions, as appropriate, are fully operational.

3.4. MILITARY COMMUNITY EDUCATION.

MCIO personnel may assist in educating the military community on the prevention of and response to CSE, as appropriate and resources permit.

3.5. CONGRESSIONAL REPORTING REQUIREMENTS.

Annual reports to the Committees on Armed Services of the Senate and the House of Representatives will detail specific actions that have been taken or that are planned to be taken to detect, combat, and stop the use of the DoD network to further CSE in accordance with Section 550D. The annual reports are due by March 21 in years 2025, 2026, 2027, 2028, and 2029.

GLOSSARY

G.1. ACRONYMS.

ACRONYM	MEANING
CSE	child sexual exploitation
DoDI	DoD instruction
IG DoD	Inspector General of the Department of Defense
MCIO	military criminal investigative organization
PL	public law
U.S.C.	United States Code
USD(I&S)	Under Secretary of Defense for Intelligence and Security

G.2. DEFINITIONS.

Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

TERM	DEFINITION
credible information	Information disclosed or obtained by a DoD law enforcement person that, considering the source and nature of the information and the totality of the circumstances, is sufficiently believable to lead a trained DoD law enforcement person to presume the fact or facts in question are true.
criminal investigation	An investigation into reported or apparent violations of law undertaken for purposes that include collecting evidence to support potential prosecution.

TERM	DEFINITION
CSE	CSE is a broad term for various crimes against children such as those described in Sections 2251 and 2252 of Title 18, U.S.C. Examples of CSE include: Producing a visual or live depiction of sexually explicit conduct involving a minor. Having a minor assist in producing a visual or live depiction of sexually explicit conduct involving anyone. Permitting a minor to engage in or assist in producing a visual or live depiction of sexually explicit conduct involving anyone. Advertising a visual depiction of sexually explicit conduct involving a minor or opportunities to participate in sexually explicit conduct with a minor. Possessing, transporting, distributing, or receiving a visual depiction of sexually explicit conduct involving a minor.
DoD nexus	Defined in DoDI 5505.03.
jurisdiction	Defined in DoDI 5505.03.
MCIO	Defined in DoDI 5505.03.
Subject	A person, corporation, or other legal entity about which credible information exists that would cause trained DoD law enforcement personnel to believe they committed a criminal offense.

REFERENCES

- DoD Directive 5106.01, "Inspector General of the Department of Defense (IG DoD)," April 20, 2012, as amended
- DoD Instruction 5015.02, "DoD Records Management Program," February 24, 2015, as amended
- DoD Instruction 5505.03, "Initiation of Investigations by Defense Criminal Investigative Organizations," August 2, 2023
- DoD Instruction 5505.19, "Military Criminal Investigative Organizations' Special Victim Investigation and Prosecution Capability," October 8, 2024
- DoD Instruction 5525.16, "Law Enforcement Defense Data Exchange (LE D-DEx)," August 29, 2013, as amended
- DoD Instruction 6400.01, "Family Advocacy Program (FAP)," May 1, 2019
- DoD Instruction 6400.06, "DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel," December 15, 2021, as amended
- DoD Instruction 6495.02, Volume 1, "Sexual Assault Prevention and Response: Program Procedures," March 28, 2013, as amended
- DoD Manual 8180.01, "Information Technology Planning for Electronic Records Management," August 4, 2023
- Public Law 116-92, Section 550D, "National Defense Authorization Act for Fiscal Year 2020," December 20, 2019 ("Enhancing the Capability of Military Criminal Investigative Organizations to Prevent and Combat Child Sexual Exploitation")
- Public Law 118-31, Section 534, "National Defense Authorization Act for Fiscal Year 2024," December 22, 2023 ("Additional Requirements for Initiative to Enhance the Capability of Military Criminal Investigative Organizations to Prevent and Combat Child Sexual Exploitation")
- United States Code, Title 5, Chapter 4 (also known as the "Inspector General Act of 1978, as amended")
- United States Code, Title 10, Chapter 80
- United States Code, Title 18

APPENDIX G

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2023 WL 1466939

Only the Westlaw citation is currently available.

United States District Court, W.D.
Tennessee, Western Division.

UNITED STATES of America, Plaintiff,

v.

Alexandria GARNER, Defendant.

Case No. 2:21-cv-20102-JTF-2

|

Signed February 2, 2023

Attorneys and Law FirmsRaney L. Irwin, United States Attorney Office, Memphis, TN,
for Plaintiff.Claiborne Hambrick Ferguson, Ramon Damas, The Claiborne
Ferguson Law Firm, P.A., Memphis, TN, for Defendant.**ORDER ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION
AND DENYING DEFENDANT'S MOTION
TO DISMISS OR SUPPRESS EVIDENCE**JOHN T. FOWLKES, JR., UNITED STATES DISTRICT
JUDGE

*1 Before the Court is Defendant Alexandria Garner's Motion to Dismiss or Suppress, filed on February 16, 2022. (ECF No. 42.) The Motion was referred to the Magistrate Judge on February 18, 2022. (ECF No. 43.) The Magistrate Judge issued a Report and Recommendation ("R & R") to Deny Defendant's Motion on May 9, 2022. (ECF No. 55.) Defendant filed his Objections to the R & R on May 23, 2022. (ECF No. 56.) The United States filed its Response to the Objections on July 5, 2022. (ECF No. 65.) For the reasons provided herein, the Court **ADOPTS** the Magistrate Judge's R & R, and **DENIES** Defendant's Motion to Dismiss or Suppress.

I. LEGAL STANDARD

Congress passed 28 U.S.C. § 636(b) "to relieve some of the burden on the federal courts by permitting the assignment of certain district court duties to magistrate judges." See

e.g. *Baker v. Peterson*, 67 Fed. App'x. 308, 311 (6th Cir. 2003); Fed. R. Civ. P. 72(a). A district court judge must review dispositive motions under the *de novo* standard. See *Matthews v. Weber*, 423 U.S. 261, 275 (1976); *Baker*, 67 Fed. App'x. at 311; 28 U.S.C. § 636 (b)(1)(B). After review, the district court is free to accept, reject or modify the Magistrate Judge's proposed findings or recommendations. See *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

Any party who disagrees with a Magistrate Judge's recommendation may file written objections. *Id.* at 142; Fed. R. Civ. P. 72(b), 28 U.S.C. § 636(b)(1)(C) and Tenn. West. LR 72.1(g)(2). A failure to file specific objections to a Magistrate Judge's report does not meet the requirement of filing an objection at all. *Howard v. Secretary of Health and Human Services*, 932 F.2d 505, 509 (6th Cir. 1991); *McCready v. Kamminga*, 113 Fed. App'x. 47, 49 (6th Cir. 2004). A district judge should adopt the findings and rulings of the Chief Magistrate Judge to which no specific objection is filed. *Brown v. Board of Educ. of Shelby County Schools*, 47 F.Supp.3d 665, 674 (W.D. Tenn. 2014). "Pro se complaints are to be held 'to less stringent standards than formal pleadings drafted by lawyers', and should therefore be liberally construed.... Pro se litigants, however, are not exempt from the requirements of the Federal Rules of Civil Procedure." *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989).

II. FINDINGS OF FACT

In the R & R, the Chief Magistrate Judge sets forth proposed findings of fact. (ECF No. 55, 2–5.) Facts pertinent to the Motion to Dismiss or Suppress are as follows: A Naval Criminal Investigative Service ("NCIS") Special Agent was stationed at the Navy base in Millington, Tennessee working on general crimes cases, including drug investigations. (ECF No. 55, 2.) NCIS received information that an individual who worked on the base had been selling marijuana on base. (*Id.*) That individual confessed to selling marijuana and identified Defendant Garner as a supplier. (*Id.*) Garner was not military personnel and did not work on the base. (*Id.*) NCIS then contacted officers at the Millington Police Department ("Millington PD") and told them Garner was selling marijuana to an individual on the base.¹ (*Id.* at 9.)

The Millington PD officers decided to investigate Garner, with NCIS assistance. (*Id.* at 10.) NCIS's original on-base target agreed to cooperate and participated in multiple controlled purchases of marijuana from Garner. (*Id.* at 10.) The cooperator eventually brought along an undercover Millington PD officer who was introduced to Garner. That undercover officer made what was the fifth controlled purchase from Garner. (*Id.* at 10, 39–40.) NCIS provided the audio/video equipment to record the purchases, as well as the money used in the transactions. (*Id.* at 24, 40.) NCIS agents were involved in each controlled purchase operation and were present at the Millington PD precinct before the purchases. (*Id.* at 24, 26, 32–33, 49–50.) One of the controlled purchases occurred at Garner's home where she sold marijuana to the cooperator and an undercover Millington police officer. NCIS Special Agent Nash photographed the marijuana obtained from the controlled purchase for his reports. (*Id.* at 28.) He could not remember if Millington PD kept custody of the purchased marijuana. (*Id.* at 27.) He probably ran Garner through multiple federal databases to determine her criminal history, which is a normal practice for any case file he opens. (*Id.* at 29.) Millington PD officers obtained a search warrant for Garner's residence. The probable cause presented in the search warrant affidavit was limited to five controlled purchases from Garner, all of which involved NCIS agents and Millington PD. Although NCIS did not assist in drafting the warrant, NCIS was present and assisted Millington PD in the execution of the warrant. (*Id.* at 11 & 30.)

Plaintiff's Objections to the Proposed Findings of Fact

Objection No. 1: NCIS Databases

*2 Defendant objects to the failure of the proposed facts to clarify that “the databases the NCIS agents had access to and did utilize were not available to State law enforcement.” (ECF No. 56, 1.) While the R & R did not specifically mention whether local law enforcement had access to the particular database that NCIS Special Agent Nash utilized to examine Garner's criminal history, it is apparent that NCIS provided various resources to local law enforcement throughout the investigation. The R & R explained that NCIS provided audio/equipment to record the controlled purchases during the investigation, which Millington PD did not have, as well as the money used in the transactions. It is a normal practice for NCIS to provide money and equipment to local law enforcement. (ECF No. 55, 4.) As noted, it is Defendant's objection that the Magistrate Judge omitted the fact that local law enforcement did not have access to the databases used

by NCIS. The objection is **GRANTED**. However, adding this fact does not change the Court's review and ultimate findings with regard to the R & R and Defendant's objections.

Although not listed as an objection, Defendant elaborates on whether the resources provided by NCIS such as money, surveillance cameras, and vehicles constituted “excessive military involvement” that the Magistrate Judge failed to consider. (ECF No. 56, 4.) Defendant refers to this as a “findings of law” objection (*Id.*) However, a review of the R & R shows that the Magistrate Judge did not ignore the involvement of NCIS in the Millington PD investigation of Garner. (See ECF No. 55, 23.) To the extent that Garner objects to the Magistrate Judge's consideration of NCIS's involvement in a local investigation as lacking, the objection is overruled.

Accordingly, the Court **GRANTS** Defendant's objection to the Magistrate Judge's proposed finding of fact regarding the NCIS database search, but otherwise **ADOPTS** the Magistrate Judge's findings of fact.

Objection No. 2: Special Agent Nash Testimony

Defendant objects to Special Agent Nash's testimony that “The Navy nexus in this case was the indication that Garner was selling marijuana to at least one person on base.” (ECF No. 56, 1.) Garner supports her objection by asserting, “there was absolutely no proof presented that Garner sold to anyone ‘on base.’ ” (*Id.*) This is true, and the Magistrate Judge's initial proposed facts need clarification. Although the initial factual finding seemed to indicate that Garner may have sold marijuana on the base, subsequent facts clearly indicate that Garner sold the drugs “to someone who subsequently took the drugs and/or sold them to base employees.” (ECF No. 55, 5.) In fact, the Magistrate Judge included other parts of Special Agent Nash's testimony where he admitted “he was not aware of Garner ever making a drug sale on the base or even setting foot on base.” (*Id.*) Therefore, the Court **GRANTS** Defendant's objection and clarifies that Special Agent Nash testified that he was not aware that Garner ever sold marijuana on base. However, the Court **ADOPTS** the Magistrate Judge's proposed finding of fact.

III. ANALYSIS

The Magistrate Judge recommends that the Court deny Defendant's Motion to Dismiss or Suppress Evidence

because: 1) the Posse Comitatus Act ("PCA"), 18 U.S.C. § 1385, does not govern the conduct of the NCIS agents in this case; 2) Department of Defense Instruction ("DoDI") 3025.21, which applies PCA-like restrictions to the Navy, also does not apply to the NCIS agents in this matter because they are not under the direct control of a military officer; 3) the agents acted within the authority of DoDI 5505.03 which provides that "it is DoD policy that DCIOs shall initiate investigations in accordance with law and governing regulations, but do not require approval from any authority outside of the DCIO" so long as "DCIOs identify a nexus before making a determination to initiate any criminal investigation or operation." (ECF No. 55, 5 & 9.) Defendant generally objects to the Magistrate Judge's finding that a military nexus was present in this case. Such a nexus, according to the Magistrate Judge, allowed NCIS to launch an investigation into the Defendants' drug activity. (ECF No. 56, 2.) Less broadly, Defendant objects to the Magistrate Judge's legal conclusions that: 1) a "military-nexus" was required in this matter, and that the facts of this case satisfied the nexus element; and that 2) DoDI 3025.21 does not apply to the NCIS agents in this matter. (See ECF No. 56, 2 & 4.)

Objection No. 3: Military Nexus

*3 Defendant alleges that the nexus requirement derived from DoDI 5505.03, "Initiation of Investigation by Defense Criminal Investigative Organizations ("DCIOs")" is not satisfied by the facts of this case. The Magistrate Judge found that NCIS is included within the list of organizations classified as a DCIO and thus governed by the instruction.

Defendant begins her nexus objection by asserting that the PCA applies in this matter. The PCA's purpose "is to prevent use of the federal army to aid civil authorities in the enforcement of civilian laws." *Gilbert v. United States*, 165 F.3d 470, 472 (6th Cir. 1999). The R & R correctly explained that the PCA did not apply to the underlying facts at the time they occurred because the PCA did not apply to the Navy. (ECF No. 55, 5 & 9.) Rather, DoDI 5505.03 governs the actions of the NCIS agents here. The instruction provides, "it is DoD policy that DCIOs shall initiate investigations in accordance with law and governing regulations, but do not require approval from any authority outside of the DCIO." DCIOs are defined to include NCIS and requires DCIOs to "identify a DoD nexus before making a determination to initiate any criminal investigation or operation." *Id.* § 4(d). The DoD nexus requirement is satisfied when it is shown that there is a reasonable likelihood that criminal activity may

be occurring on a DoD facility or installation. This would necessarily include, for example, a DoD employee being a victim of a crime or the target of an investigation. *Id.*

The Defendant asserts that "[n]o sailor was a victim of or criminal coconspirator with.... Ms. Garner.... and her conduct is absolutely void of the nexus form (sic) the DoDI." (ECF No. 56, 3.) However, the nexus allowing NCIS to launch an investigation into Garner was the fact the agents received information that the Defendant was selling drugs to a base employee who was reselling those drugs to others on base. It is irrelevant whether Garner knew for certain that she was selling drugs to a Navy employee. What is relevant is that drugs were sold on the base by a Navy employee, and that Garner was identified as the supplier of the drugs. Thus, it is sufficient enough for purposes of satisfying the nexus requirement that Garner was the supplier of drugs to a Navy employee. See *Fox v. State*, 908 P.2d 1053, 1057 (Alaska Ct. App. 1996) (finding clear military purpose where a soldier tested positive for narcotics and Army investigators launched an investigation into the source of supply – an off-base civilian who sold drugs to military personnel).

The Court **REJECTS** Defendant's objection and **ADOPTS** the Magistrate Judge's finding that a military nexus was required by DoDI 5505.03 and also satisfied by the underlying facts of this matter.

Objection No. 4: DoDI 3025.21's Application to Civilian Employees

Defendant insists that the Magistrate Judge erred in finding that DoDI 3025.21 does not apply to civilian employees. Although the Magistrate Judge concluded that DoDI 3025.21 did not apply, she also explained that DoDI 3025.1 permits certain direct assistance by the DoD to civilian law enforcement authorities, so long as the assistance does not "serve as a subterfuge to avoid the restrictions of the Posse Comitatus Act." (ECF No. 55, 7.) Thus the R & R insinuated that DoDI 3025.21 would have allowed the NCIS agents to cooperate with Millington Police Department in this matter because the instruction allowed it. (*Id.*) However, the Magistrate Judge ultimately found that the instruction does not apply to civilian employees, which NCIS agents are considered to be. (*Id.* at 8.)

*4 Although Defendant objects to the Magistrate Judge's finding regarding the DoDI 3025.21, the instruction does not weigh in Defendant's favor. The Department of Defense

("DoD") and the Secretary of the Navy have issued "PCA-like restrictions" to the Navy. See *United States v. Chon*, 210 F.3d 990, 993 (9th Cir. 2000). DoDI 3025.21, titled "Defense support of Civilian Law Enforcement Agencies," generally allows DoD support to Federal, State, and local civilian law enforcement agencies. DoDI 3025.21, § 1(a) (Feb. 27, 2013). It indicates that the PCA imposes restrictions on DoD participation in civilian law enforcement activities. *Id.* at encl. 3, § 1(a)(1). The instruction provides that "[a]ctions taken for the primary purpose of furthering a DoD ... function of the United States, regardless of incidental benefits to civil authorities," are not prohibited, so long as those actions do not "serv[e] as a subterfuge to avoid the restrictions of the Posse Comitatus Act." *Id.* at encl. 3, § 1(b)(1). However, NCIS is not governed by this particular instruction because NCIS agents are not under the direct control of military officers. Therefore, they are considered to be civilian employees.

Within her objection, Defendant alleges that the Magistrate Judge cited extensively but ultimately disregarded the decision in *U.S. v. Chon*, 210 F.3d 990, 993 (9th Cir. 2000). (ECF No. 56, 4.) In that case, the court found that although NCIS is "civilian directed with a civilian chain of command, NCIS is accountable to the Navy" *Id.* at 994. However,

even if the Magistrate Judge followed the reasoning of *Chon*, it would not aid the Defendant's cause. This is because application of DoDI 3025.21 to NCIS in this matter would still have permitted NCIS to investigate Garner's drug activity and allow NCIS to share that information with Millington Police Department.

Therefore, the Court **REJECTS** Defendant's objection and **ADOPTS** the Magistrate Judge's finding that DoDI 3025.21 does not apply in this matter.

CONCLUSION

After a *de novo* review of the record, the Court hereby **GRANTS** Defendant's factual objections as noted above, and otherwise **ADOPTS** the Magistrate Judge's Report and Recommendation and **DENIES** Defendant's Motion to Dismiss or Suppress.

IT IS SO ORDERED this 2nd day of February, 2023.

All Citations

Not Reported in Fed. Supp., 2023 WL 1466939

Footnotes

- 1 For clarity, NCIS agents could not confirm that the Defendant sold any controlled substances on the base or that she had ever set foot on the base. (ECF No. 65-1, 20.)

APPENDIX H

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Only the Westlaw citation is currently available.

United States District Court, W.D.
Texas, San Antonio Division.

UNITED STATES of America

v.

Rick BENAVIDES, Defendant.

SA-19-CR-152-XR

Signed 10/08/2020

Attorneys and Law Firms

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TX, for United States of America.

Jack Carter, Federal Public Defender, San Antonio, TX, for
Defendant.

ORDER

XAVIER RODRIGUEZ, UNITED STATES DISTRICT
JUDGE

*1 Defendant is charged in an indictment with attempted coercion and enticement of a minor in violation of 18 U.S.C. § 2422(b). In his motion to suppress, he seeks the suppression of all evidence in this case, arguing that the investigation and arrest in this case were initiated by Special Agents (SAs) with the United States Air Force, Office of Special Investigations (AFOSI) and this conduct violates the Posse Comitatus Act, 18 U.S.C. § 1385.

On February 11, 2019, SA/USAF Technical Sergeant Jason Allen Hutchings, acting in his capacity as a Special Agent in the U.S.A.F., Office of Special Investigations, posted a message on a social messaging app called Whisper. The posting (called a whisper) consisted of text superimposed over an image of a young girl. The text stated: "Visiting my brother on Lackland afb! Hmu" with two yellow faces, each with smiling eyes, a closed smile, rosy cheeks, and three



hearts floating around each head.

Within five minutes someone naming himself "Man on Solitude—45 M" responded. The Whisper app indicated to SA Hutchings that the individual responding was approximately 3 miles away from his location.¹ SA Hutchings testified that in this operation dubbed "Operation ICEBERG," AFOSI is targeting DoD personnel. Because the individual stated in subsequent whispers that he was a contractor who works at Joint Base San Antonio-Kelly, SA Hutchings testified that "Man of Solitude" met the criteria of a "DoD affiliated person" subject to Operation ICEBERG. After various whispers were exchanged, SA Hutchings gave "Man of Solitude" "her" cell phone number and thereafter text messages were exchanged.² On February 17 or 18, "Man of Solitude" began to request nude photos and a request for sex. Ultimately, the undercover agent and "Man of Solitude" agreed to meet on February 20, 2019 at Lions Park located on Lackland Air Force Base, an exclusive federal jurisdiction.³ Defendant was arrested by Air Force OSI when he arrived at the prearranged location.

To combat child exploitation the Department of the Air Force, Office of Special Investigations created Operation ICEBERG. "The involvement of military members as predators and their families as victims" necessitated a "proactive undercover operation."⁴ Operation ICEBERG authorized undercover agents to assume the persona of a known underage person. The persona was used to target active duty or DoD affiliated persons who attempt, entice, or solicit underage persons.⁵ Recognizing the Posse Comitatus Act, Operation ICEBERG conditions that AFOSI agents may only participate in investigations where targets have a DoD affiliation.⁶

*2 Defendant argues that "the conduct of the AFOSI in enforcing the civilian laws of the United States against the civilian population of the United States by using methods and means normally used by civilian law enforcement agencies is a widespread practice and the AFOSI has repeatedly violated the Posse Comitatus Act." Defendant points out six other cases from 2016 through 2018, where indictments have been filed in the Western District of Texas for similar activity.⁷ Defendant argues that "the remedy of exclusion of evidence obtained in violation of this Act is necessary to prevent the continued and repeated violations of this law."

The Posse Comitatus Act states: "Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the

Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.” 18 U.S.C.A. § 1385.

Defendant argues that “AFOSI, by using a social media application, necessarily cast a wide net that did not discriminate between military and non-military subjects.” That may be true; however, as SA Hutchings testified, in a typical post there are about 50 individuals who respond. SA/USAF Major David Drake, supervisor of the Internet Crimes Against Children operations testified, referencing DoD Instruction 5505.03⁸, investigations are pursued on the basis of a military nexus – the location of where the crime was committed or the status of the individual committing the crime. No evidence was tendered that suggests that military resources are being deployed to directly assist domestic law enforcement. The PCA allows “an exception to the general prohibition on direct involvement where the military participation is undertaken ‘for the primary purpose of furthering a military or foreign affairs function of the United States, regardless of incidental benefits to civilian authorities.’” *United States v. Dreyer*, 804 F.3d 1266, 1275 (9th Cir. 2015). In this case, the AFOSI used the Whisper app for the primary purpose of ensuring that DoD personnel were not engaged in child exploitation. Secondly, Operation

ICEBERG was implemented for the purpose of ensuring the safety of military dependents and guests to the installation. Defendant's reliance upon *Dreyer* is inapt because the investigation conducted in *Dreyer* was not reasonably tied to military installations or military personnel. In this case, the Defendant was a contractor with access to a secured military installation, establishing a DoD affiliation. Further, when conducting Operation ICEBERG AFOSI ceased any chat activity once personnel determined there was no DoD nexus or affiliation. Accordingly, this Court concludes that in this case there was no violation of the Posse Comitatus Act.⁹

*3 Alternatively, even if there had been a violation of the PCA, there has not been demonstrated widespread and repeated violations of the PCA to warrant an exclusionary sanction. *United States v. Salinas*, No. 19-50936, 2020 WL 5494483 (5th Cir. Sept. 9, 2020). As stated above, the other indictments Defendant relies upon were instances where servicemembers were charged with attempted enticement of a minor. Those investigations did not violate the PCA.

Defendant's motion to suppress is DENIED.

All Citations

Not Reported in Fed. Supp., 2020 WL 5984062

Footnotes

- 1 SA Hutchings testified that in his experience anyone responding to a post that was within 5 miles was a “good indicator” of DoD personnel or DoD affiliates being involved. In posts or text messages the Defendant indicated he worked in buildings behind the stadium and flight line of the installation.
- 2 Once SA Hutchings obtained Defendant's cell phone number for the purpose of exchanging text messages, a few days before his arrest, SA Hutchings was able to perform a background check and verify that Defendant was employed as a government contractor working at JBSA.
- 3 In areas of exclusive federal jurisdiction, local civilian law enforcement officers have no authority to arrest individuals.
- 4 Gov't Ex. 5, p. 2, October 6, 2020 hearing.
- 5 *Id.* at p. 3.
- 6 *Id.* at p. 6. See also Defendant Ex. B.
- 7 The Court notes that five of the six cases involved servicemembers. “[E]ven though [the Posse Comitatus Act] clearly restricts military involvement in civilian law enforcement, it is not the intent of the PCA to limit the

military from investigating criminal activities committed by its own members whether such activities occur on or off a military base." *United States v. Lewis*, 824 F. Supp. 2d 169, 174 (D.D.C. 2011), *aff'd*, 505 F. App'x 1 (D.C. Cir. 2013).

- 8 See Gov't Exhibit B, October 6, 2020 hearing.
- 9 After Defendant's arrest, USAF Special Agents conducted a number of interviews of Defendant's friends and family members located throughout the San Antonio area. This occurred when AFOSI was already aware that the U.S. Attorney's Office would prosecute this case. The Court is concerned that this activity *may* have constituted assistance to civilian law enforcement; however, it appears that in this case no evidence was gathered during the post-arrest phase of the investigation that is material to this case.

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