To All FBIHQ Divisions

Attn: All ADICs/SACs

Attn: OGC

Attn: CID

Attn: RMD

Attn: CI

Attn: FE

Precedence: ROUTINE Date: 03/16/2004

To: All FBIHQ Divisions

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All Field Offices

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To PROVIDE INTERIM GUIDANCE TO ALL DIVISIONS AND FIELD

Approver: ASHLEY GRANT D

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Date: 03/16/2004

From: CRIMINAL INVESTIGATIVE

To: ALL FBIHQ DIVISIONS INVESTIGATIVE

ALL FIELD OFFICES

FBIHQ

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TO PROVIDE INTERIM GUIDANCE TO ALL DIVISIONS AND FIELD

Author: 

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4/19/2011

ACLURM004878
From: Criminal Investigative, Transnational Criminal Enterprise Section, Asian/African Criminal Enterprise Unit, Room 3015
Contact: SSA

Approved By: Ashley Grant D

Drafted By: mtd

Case ID #: 66F-HQ-A1402069-A (Pending) 66F-HQ-C1384970

Title: ALIEN SMUGGLING/HUMAN TRAFFICKING; ADMINISTRATIVE FILE

Synopsis: To provide interim guidance to all divisions and field offices regarding changes to the Manual of Investigative Operations and Guidelines (MIOG) pertaining to alien smuggling investigations.

Reference: 66F-HQ-A1085154-MISC Serial 85

Administrative: MIOG, Part 1, Section 281-18

Details: In June 1997, the FBI and the Immigration and Naturalization Service (INS) joined in a Memorandum of Understanding (MOU) which delineated FBI and INS alien smuggling investigatory responsibilities. Per the MOU, after it was determined that a joint FBI, INS and United States Border Patrol (USBP) investigation was warranted, the INS was then responsible to furnish most of the resources necessary to conduct the investigation. Moreover, in cases where alien smuggling or document fraud was the primary predicate violation, INS was to be designated as the lead investigative agency. These stipulations were agreed upon since the FBI had no resource allocations for conducting alien smuggling investigations at that time.

This investigative strategy remained in effect until early 2003, when the Attorney General (AG) issued an order expanding the FBI's authority to investigate and arrest aliens who had committed or were committing non-criminal violations of the Immigration and Nationality Act of 1952 and related statutes. It must be noted, that prior to this order, the FBI already possessed broad authority to investigate federal criminal violations related to immigration offenses under both Title 18 and Title 8 of the United States Code and to arrest those who committed such criminal violations. FBI alien smuggling investigations were then conducted pursuant to the MIOG, Part 1, Section 281-18. Though delegated to the FBI by the AG, the implementation of this new immigration authority has not yet been coordinated between the Department of Homeland Security (DHS) and the Department of Justice (DOJ).

In March 2003, DHS was formed. Subsequently, twenty-
two domestic agencies were consolidated into one department responsible for protecting the nation against threats to the homeland. INS and the investigative element of the United States Customs Service (USCS) were integrated into DHS and organized into the Bureau of Immigration and Customs Enforcement (ICE). In addition, the uniformed component of the USCS and the USBP were also integrated into DHS as the Bureau of Customs and Border Protection (CBP). Because this reorganization no longer placed ICE under the purview of DOJ, the FBI and ICE have mutually agreed that the MOU should no longer be in effect. The establishment of an updated MOU is the subject of ongoing discussions between the FBI and DHS.

As trafficking in persons is often linked to organized crime, and profits from trafficking enterprises help fuel other illegal activities, the Transnational Criminal Enterprise Section, Asian/African Criminal Enterprise Unit has been delegated responsibility to manage the Alien Smuggling/Human Trafficking Initiative. Because of the dissolution of the MOU, interim guidance to the MIOG, Part 1, Section 281-18 (1)(d)(e) and (6) is provided by the OCS to all receiving offices.

Accordingly, Section 281-18 (1)(d) should be specified to read that in 1997, a MOU regarding alien smuggling investigations between the FBI and INS was initially established. However, due to the formation of DHS and its establishment of ICE, the MOU is now discontinued. It should also be noted that the FBI possesses Title 18 and 8 authority to investigate federal criminal violations related to immigration offenses and to arrest those who commit such criminal violations. Furthermore, the FBI's authority has also been expanded by the AG to investigate and arrest aliens who have committed or are committing non-criminal violations of the Immigration and Nationality Act of 1952 and related statutes. The primary purpose of alien smuggling investigations shall continue to be the dismantlement or disruption of criminal enterprises through prosecution and asset forfeiture.

Accordingly, Section 281-18 (1)(e), alien smuggling investigations will no longer be guided by the policies and procedures set forth in the MOU. Field offices will no longer be required to ensure that the MOU is readily available to all personnel investigating alien smuggling cases.

Accordingly, Section 281-18 (6), MOU, should be excluded from the section.

It will be current FBI policy to only notify ICE and CBP of pending alien smuggling investigations. However, each field office should make reasonable efforts to develop and conduct collaborative investigations with ICE, particularly when enforcement actions of non-criminal Title 8 violations are to be undertaken.

Additional EC notification and guidance will be forthcoming to address alien smuggling/human trafficking investigations based on further dialogue between the FBI and DHS.
This interim guidance was reviewed by the Office of the General Counsel who concurred with the above recommendations. Additionally, this guidance was coordinated with Unit Chief Civil Rights Unit.

LEAD(s):
Set Lead 1: (Info)

ALL RECEIVING OFFICES
Read and clear.