



Department of Homeland Security
Bureau of Customs and Border Protection
U.S. Border Patrol

EPT 50/19.1.5

Office of the Chief
U.S. Border Patrol Sector Headquarters
8901 Montana Avenue
El Paso, Texas 79925-1212

APR 20 2004

MEMORANDUM FOR: PATROL AGENTS IN CHARGE
AND UNIT SUPERVISORS
EL PASO SECTOR

FROM: Luis E. Barker *Luis E. Barker*
Chief Patrol Agent
El Paso Sector

SUBJECT: Enforcement Activities at Schools, Places of Worship, and at
Funeral or Other Religious Ceremonies

Attached for your information are two policy memorandums sent to the field on June 20, 2001. Reiterate this policy relating to enforcement activities at schools, places of worship, funerals, or other religious ceremonies. Additionally, accompanying these memorandums is a directive issued by my office, in which I instruct all PAICs and Unit Supervisors to strictly adhere to the guidelines given in these two policy memorandums.

Please ensure that every agent understands this policy and complies with it. Agents should be aware of the locations that fall within the purview of these instructions to avoid any inadvertent or perceived violation of the policy.

Please distribute copies of these memorandums to every agent. You are directed to forward to Assistant Chief Patrol Agent (ACPA) Manuel Flores, Sr., a roster of your agents showing that they have received this material.

Should there be any questions, please contact ACPA Flores at (915) 834-8304.

Attachments

Unit	Date	Initial	Date
01	4/20/04		
02	4/20/04		
03			
04			
05			
06			
07			
08			
09			
10			





U.S. Department of Justice
Immigration and Naturalization Service

EPT 50/19.1.5

U.S. Border Patrol Sector Headquarters
8901 Montana Avenue
El Paso, Texas 79925-1212

JUN 20 2001

MEMORANDUM FOR ALL PATROL AGENTS IN CHARGE AND UNIT SUPERVISORS
EL PASO SECTOR

FROM: Luis E. Barker
Chief Patrol Agent
El Paso Sector

SUBJECT: Enforcement Activities at Schools, Places of Worship, or at Funeral or Other
Religious Ceremonies.

Attached for your information are two policy memorandums relating to enforcement activities at schools, places of worship, funerals or other religious ceremonies. It is the policy of the Service, and this Sector, to attempt to avoid apprehension of persons and to tightly control investigative operations on the premises of schools, places of worship, funerals and other religious ceremonies. All agents should be cognizant of the issues contained in these two memos and be sensitive to the areas identified.

As stated in the memo, this policy does not affect the scope of authority of Service officers, but is directed to the operational implementation of such authority. The requirement for approval in advance of such operations and actions on such premises should not be construed as an indication of tolerance for any violation of the law by anyone at, or in charge of a school or place of worship. All Patrol Agents in Charge, and Unit Supervisors should make sure their agents understand that they should not conduct operations in these areas and should enter these premises only in the most exigent of circumstances.

Memorandum for All Patrol Agents in Charge and Unit Supervisors

Page 2

Subject: Enforcement Activities at Schools, Places, of Worship, or at Funerals or Other
Religious Ceremonies.

Please provide a roster of your agents to ACPA David Ham showing that they have received a copy of these memos and that they have read and understand the contents. It is extremely important in this era of increased interest in our activities on the border by a variety of special interest groups that we understand and comply with this policy. If you have any questions concerning this policy, please contact ACPA David Ham at (915) 834-8304.

Attachments



U.S. Department of Justice
Immigration and Naturalization Service

COR 50/19.1.5

Central Region
7701 N. Stemmons Freeway
Dallas, Texas 75247

June 14, 2001

MEMORANDUM FOR DISTRICT DIRECTORS
CHIEF PATROL AGENTS
CENTRAL REGION

FROM:

for Robert A. Wallis
Acting Regional Director
Central Region

A handwritten signature in black ink, appearing to read "Robert A. Wallis", written over the typed name.

SUBJECT: Enforcement Activities at Schools, Places of Worship, or at Funerals or Other Religious Ceremonies.

It is the policy of the Service to attempt to avoid apprehension of persons and to tightly control investigative operations on the premises of schools, places of worship, funerals and other religious ceremonies.

On May 17, 1993, Acting Associate Commissioner for Operations, James A. Puleo, issued a memorandum outlining the Service's policy on excludable areas for enforcement activities. The memo first states that enforcement operations that are likely to involve apprehensions at schools, places of worship, or at funerals or other religious ceremonies must be approved in advance by the District Director or Chief Patrol Agent. The Assistant District Directors or Deputy Chief Patrol Agents may approve inspections of records; preliminary investigative activities relating to a specific individual or individuals which will not entail contact with the person under investigation; and similar activities at such locations when apprehensions will not be made.

For the purposes of this policy, the term "schools" includes preschools; primary, secondary, and post-secondary schools (including colleges and universities); and other institutions of learning such as vocational or trade schools. "Places of worship" includes such institutions as churches, temples, and synagogues. "Other religious ceremonies" include gravesite ceremonies and rosaries. The requirement for advance approval of operations in such locations should not be construed as tolerance for violations of the law by or on the premises of such institutions.

Memorandum for District Directors and Chief Patrol Agents

Page 2 of 2

Subject: Enforcement activities at schools, places of worship, or at funerals or other religious ceremonies.

In determining the appropriateness of a proposed action, District Directors and Chief Patrol Agents are to consider: (1) the availability of alternative measures that would achieve the enforcement objective; (2) the importance of the enforcement objective in the context of INS priorities; (3) measures that can be taken to minimize the impact on the operation of the school or place of worship; and (4) whether the action has been requested or approved by the management of the institution involved.

Michael A. Pearson, Executive Associate Commissioner for Field Operations, must approve exceptions to the policy. Also, INS headquarters might make exceptions in unusual situations, such as during a declared national emergency.

The memo added that situations that do not permit written authorization before entering schools or places of worship, "officers are expected to exercise good judgement concerning the appropriate action to take." The officer must report all exigent circumstances that mandated deviation from the set policy.

Finally, the memo noted that where operations covered by the policy are planned in advance, the general practice for Border Patrol Agents requires that the operation be conducted in plain clothes. However, in exigent circumstances the agents should consider the likelihood that they will be identified as law enforcement officers, because in such circumstances the absence of a uniform might mitigate against a pursuit.

This directive does not affect the scope of authority of Service officers under the Immigration and Nationality Act, but is directed to the operational implementation of such authority. The requirement for approval in advance of such operations and actions on such premises should not be construed as an indication of tolerance for any violation of the law by anyone at, or in charge of a school or place of worship. This directive is an internal statement of procedure, which does not confer any benefits upon nor impose any requirement upon anyone other than Service officers as a part of a uniform exercise of delegated authority.

Should you have any questions regarding this procedure, please call Robert E. Jolicoeur, Deputy Assistant Regional Director, Detention and Removal, at (214) 905-8337.

Immigration Information

Onlineplus

NEXT DAY HOME STARTS NEW XMAS SEARCH QUOSQUAT YEADROK TRANSLATE PRODUCE
OVERVIEW PREVIOUS NEXT QUERY QUERY HELP CLEAR SEARCH GIVE LIST PREVIOUS HIT NEXT HIT LAST HOME

INSERTS PLUS/U.S. Border Patrol Handbook/Chapter 5: Arrest and Search

Chapter 5: Arrest and Search

- 5.1 Law Enforcement Activities at Schools and Places of Worship
- 5.2 Seizure of Conveyances
- 5.3 Civil Rights in Law Enforcement
- 5.4 Approach and Techniques
- 5.5 Handling Persons in Custody and Official Government Data Systems
- 5.6 Post-arrest Procedures

References:

- 8 USC Sections 1324 and 1357
- 18 USC Sections 981 and 982
- Immigration and Nationality Act: Sections 274 and 287
- 8 CFR Sections 274 and Part 287
- 28 CFR Part 9

Officers' Handbook (M-68), Asset Forfeiture Office Manual on Conveyance Seizures, The Law of Search and Seizure for Immigration Officers (M-69), Administrative Manual, sections 5.2.101 and 3.2.209; Protective Measures for PC's (Policy Memorandum)

Note: Border Patrol policies prior to the establishment of the Homeland Security Agency remain in effect pending any revision created by the CBP.

5.1 Law Enforcement Activities at Schools and Places of Worship

(a) Authority. Border Patrol Agents may interrogate, without warrant, any alien or person believed to be an alien regarding the person's right to be in or remain in the United States. However, 8 USC Section 1357 allows agents to question persons who are believed to be in the United States illegally is limited by the Fourth Amendment. The Bureau of Customs and Border Protection (CBP) has placed further limitations on the exercise of this authority with regard to schools and places of worship.

(b) Protection for Schools and Places of Worship. CBP Policy requires written approval from the Chief Patrol Agent or the Deputy Chief Patrol Agent prior to any enforcement related activities at schools or places of worship (see Appendix 5-1 currently the INS policy memorandum dated May 17, 1993 which discusses enforcement activities at schools and places of worship, or at funerals or other religious services.

(1) Schools. The Federal Courts have established that the public interest is served when students and their teachers are free from undue interference from law enforcement officers. In order to ensure that there is no perception of undue interference, the CBP refers to the INS policy dated March 7, 2002 (see Appendix 5-2), any enforcement operation that involves the targeting of foreign students and/or schools that are authorized to accept foreign students for enrollment shall be reported to Headquarters prior to conducting such an operation.

(2) Places of Worship. Similar considerations apply to places of worship. The first amendment of the Constitution ensures the free practice of religion and the separation of church and State. Enforcement activity near places of worship may be construed as the Government's intrusion into a person's free expression of his or her faith. Furthermore, it may be seen as a state-sanctioned infringement of or hindrance to a particular religion and implied support of another.

(A) Because schools and places of worship are accessible to the public, they are areas that a Border Patrol Agent may enter. However, the consequences of such entry must be considered. Often the CBP and the public are better served by an agent's careful approach and ability to use alternative enforcement techniques.

(B) Exceptions. There are exceptions to the general avoidance of enforcement activities at schools and places of worship. These are cases when all other avenues have been exhausted, or when the safety of officers or the public is at risk. In such a situation, the Border Patrol Agent is to notify his/her immediate supervisor as soon as possible.

(C) These restrictions apply only to enforcement activities. The agents will, in the course of their duties, enter schools or places of worship for the purpose of public relations, canine demonstrations, career fairs, and other community functions.

5.2 Seizure of Conveyances

(a) Authority. 8 USC Section 1324(b) authorizes Border Patrol Agents to seize for forfeiture any conveyance, including any vehicle, vessel, or aircraft used in the committing a violation of 8 USC Section 1324(a) unless the conveyance is established by the owner to have been unlawfully in the possession of a person other than the owner in violation of criminal laws (see 8 CFR Section 274.5(b)(2)) or the conveyance was used in an act to which the owner was not privy did not consent, and the owner took all reasonable steps to prevent illegal use of the conveyance (see 8 CFR Section 274.5(c)(3)).

Memorandum



LRT 40/4-P

Subject

Sector Policy Regarding Entry Into
Places of Worship, Schools and
Private Residences

Date

January 21, 1993

To

All Sector Employees
Laredo Sector

From

Jose E. Garza
Chief Patrol Agent
Laredo, Texas

This memorandum is to ensure that all Sector employees are fully aware of Sector policy regarding entry into places of worship, schools and private residences.

Places of worship will not be entered for the purpose of apprehending illegal aliens even if in hot pursuit unless an Assistant Chief or above has authorized it.

Schools will not be entered to arrest illegal aliens even if in hot pursuit. The only exception is to pick up the children of an alien in custody for the purposes of maintaining family unity after an Assistant Chief or above has authorized it.

Private residences will not be entered to arrest illegal aliens even if in hot pursuit unless permission has been given by the owners and a Supervisory Agent or above has authorized it.

Memorandum

HQ 807-P

Subject Enforcement Activities at Schools, Places of Worship, or at funerals or other religious ceremonies.	Date MAY 17 1993
---	--------------------------------

To District Directors Chief Patrol Agents	From Office of Operations
--	---

POLICY:

It is a policy of the Service to attempt to avoid apprehension of persons and to tightly control investigative operations on the premises of schools, places of worship, funerals and other religious ceremonies.

PROCEDURES:

Enforcement operations which are likely to involve apprehensions on the premises of schools, places of worship, or at funerals or other religious ceremonies require advance written approval by the District Director or Chief Patrol Agent. Such actions are reportable under Operations Instructions (OI) 103.1(g) pertaining to reporting of incidents and unusual matters. Approval of an operation by a field office manager does not substitute for required headquarters authorizations for actions requiring such approval, e.g., 511 cases.

The Assistant District Directors, OIC, or Deputy Chief Patrol Agent, may approve inspections of records; preliminary investigative activities related to a specific individual or individuals which will not entail contact with the person under investigation; and similar activities at such locations when apprehensions will not be made.

For purposes of this policy, the term "schools" includes pre-schools; primary, secondary, and post-secondary schools (including colleges and universities); and other institutions of learning such as vocational or trade schools. "Places of worship" includes such institutions as churches, temples, and synagogues. "Other religious ceremonies" include grave site ceremonies and rosaries. The requirement for advance approval of operations in such locations should not be construed as tolerance for violations of the law by or on the premises of such institutions.

In determining the appropriateness of a proposed action, District Directors and Chief Patrol Agents shall consider the following:

Page 2
District Directors
Chief Patrol Agents

The availability of alternative measures which would achieve the enforcement objective (e.g., making the arrest off the premises);

The importance of the enforcement objective in the context of Service priorities;

Measures which can be taken to minimize the impact on operation of the school or place of worship;

~~Whether the action has been requested or approved by managers of the institution involved.~~


Exceptions to this policy, e.g., local agreements to cover a specific situation or institution, must be approved in writing by the Associate Commissioner for Enforcement. Headquarters may also direct exceptions in such unusual situations as a declared national emergency by Presidential Executive Order or National Security Council directive, e.g., a mass alien influx or alien registration action.

When situations arise that do not permit written authorization prior to entry onto the premises of schools or places of worship, officers are expected to exercise good judgement concerning the appropriate action to take. Some situations will require the officer to proceed; in other instances entry onto the premises will not be appropriate. If exigent circumstances require a deviation from this policy, the matter must be reported immediately by the District Director or Chief Patrol Agent to the appropriate Assistant Commissioner. All field office managers must ensure that enforcement officers are well versed in and able to apply the criteria for exigent circumstances stated in the Service manual on *The Law of Arrest, Search, and Seizure for Immigration Officers* (M-69). Reports should explain the exigency requiring the officer's action, any steps which were taken to secure supervisory authorization in the absence of written approval (e.g., oral approval from supervisor), the seriousness of the suspected violation, whether the facility was in operation (e.g., were classes in session), and other pertinent facts.

Where operations covered by this policy are planned in advance, the general practice for Border Patrol officers requires that the operation will be conducted in plain clothes. However, under exigent circumstances, one of the factors that officers should consider is the likelihood that they will be identified as law enforcement officers; in such instances, the absence of a uniform may mitigate against continuing a pursuit.

Page 3
District Directors
Chief Patrol Agents

This directive does not affect the scope of authority of Service officers under the Immigration and Nationality Act, but is directed to the operational implementation of such authority. The requirement for approval in advance of such operations and actions on such premises should not be construed as an indication of tolerance for any violations of the law by anyone at or in charge of a school or a place of worship. This directive is an internal statement of procedure which does not confer any benefits upon nor impose any requirements upon anyone other than Service officers as a part of a uniform exercise of delegated authority.


James A. Fulleo
Acting Associate Commissioner

Enclosure

Interpreter Releases
July 2, 1993

***870 INS SETS NEW STANDARDS FOR ENFORCEMENT ACTIVITIES AT SCHOOLS, RELIGIOUS PLACES**

Copyright © 1993 Federal Publications Inc.

"It is a policy of the Service to attempt to avoid apprehension of persons and to tightly control investigative operations on the premises of schools, places of worship, funerals and other religious ceremonies." That is a new enforcement standard set forth in a recent internal INS memorandum.

The memo, signed by Acting Associate Commissioner for Operations James A. Puleo, was issued on May 17, 1993. It is reproduced in Appendix II of this Release.

The memo first states that enforcement operations that are likely to involve apprehensions at schools, places of worship, or at funerals or other religious ceremonies must be approved in advance by the district director or chief patrol agent. Assistant district directors or deputy chief patrol agents may approve inspections of records, preliminary investigative activities related to a specific individual or individuals that will not entail contact with the person under investigation, and similar activities at such locations when apprehensions will not be made.

In determining the appropriateness of a particular action, the memo continues, district directors and chief patrol agents are to consider: (1) the availability of alternative measures that would achieve the enforcement objective; (2) the importance of the enforcement objective in the context of INS priorities; (3) measures that can be taken to minimize the impact on the operation of the school or place of worship; and (4) whether the action has been requested or approved by the management of the institution involved.

Exceptions to the policy must be approved by the INS Associate Commissioner for Enforcement. Also, INS headquarters might make exceptions in unusual situations, such as during a declared national emergency.

The memo adds that in situations that do not permit written authorization before entering schools or places of worship, "officers are expected to exercise good judgment concerning the appropriate action to take." The officer must report all exigent circumstances that mandated deviation from the set policy.

Finally, the memo notes that where operations covered by the new policy are planned in advance, the general practice for Border Patrol officers requires that the operation be conducted in plain clothes. However, in exigent circumstances the officers should consider the likelihood that they will be identified as law enforcement officers, because in such circumstances the absence of a uniform might mitigate against continuing a pursuit.

INS enforcement activities at schools and places of worship have always been controversial. Last December, for example, a federal judge enjoined Border Patrol agents from "harassing" residents of a school district in Texas merely because the residents were Hispanic. *Murillo v. Musegades*, 809 F.2d 487 (W.D. Tex. 1992). [FN31] Also, in 1988 controversy erupted in California after the INS arrested several undocumented aliens during a Roman Catholic mass. [FN32]

70 No. 25 INTERREL 870

Page 2

70 NO. 25 Interpreter Releases 870

(Cite as: 70 NO. 25 Interpreter Releases 870)

[FN31]. See 70 Interpreter Releases 322 (Mar. 15, 1993).

[FN32]. Los Angeles Times, Sept. 29, 1988, at 38, col. 1; Sept. 30, 1988, at 2, col. 1.

END OF DOCUMENT

Interpreter Releases
March 15, 1993

***322 COURT ENJOINS EL PASO BORDER PATROL FROM HARASSING HISPANICS AT LOCAL SCHOOL**

Copyright © 1993 Federal Publications Inc.

A federal court has enjoined El Paso Border Patrol agents from stopping or detaining individuals solely because they look Hispanic. *Murillo v. Musegades*, EP-92-CA-319-B (W.D. Tex. Dec. 4, 1992). Senior U.S. District Judge Lucius D. Bunton, III found that residents of the Bowie High School District in El Paso, Texas were being harassed primarily because they looked Hispanic.

The plaintiffs, U.S. citizens and residents of El Paso, Texas are all of Hispanic descent. They include students, graduates and staff of Bowie High School. Because Bowie High School is located right next to the U.S.-Mexico border, many undocumented aliens enter the U.S. through the high school grounds. The Border Patrol has had a regular, consistent and prominent presence on the campus, arresting people illegally entering the U.S. from Mexico.

Prompted by complaints from students, teachers and residents of the Bowie High School District alleging physical and verbal abuses by Border Patrol agents, Bowie principal Paul Strezlin sought to put an end to the Border Patrol's activities on the campus. He told Dale Musegades, the El Paso Border Patrol sector chief, about instances of individuals being stopped and questioned about their citizenship and in some cases frisked, searched or detained by Border Patrol agents. Mr. Musegades was unresponsive, and claimed there was no problem at the high school. [FN22]

In May 1992, Civil Rights Commission hearings were held in El Paso airing the public outcry of alleged Border Patrol abuses. In October 1992, the Superintendent of the El Paso Independent School District and Mr. Musegades reached a "Gentlemen's Agreement." This agreement, however, only provided that reports of abuses of students on the Bowie High School campus were to be directed to the Superintendent's office.

In October 1992, the plaintiffs filed this class action lawsuit, seeking to enjoin the Border Patrol from violating their civil rights. Named as defendants were Mr. Musegades, the INS, and at least 13 unidentified Border Patrol agents.

In his December 4 opinion, Judge Bunton criticized Mr. Musegades for his failure to remedy the alleged violations. Judge Bunton observed that the system for reporting and investigating alleged abuses was ineffective because victims of abuse were often discouraged from filing complaints by the governmental officers, personnel and complaint structure. This system does not provide any methods for addressing or prohibiting future abuses, he noted. Judge Bunton also found that the El Paso Border Patrol was not in compliance with an INS El Paso office guideline prohibiting law enforcement activities at schools except where prior approval had been granted.

Judge Bunton found that in many instances the Border Patrol agents did not have a reasonable suspicion of either alienage or illegal alienage when they stopped individuals. Plaintiffs' mere appearance of being of Hispanic descent was the "overriding reason" for their harassment, the judge concluded. Condemning the Border Patrol's discriminatory practices, Judge Bunton observed (emphasis in original; citations omitted):

The [INA] allows an INS Agent to question a person, believed to be an alien, about his or her "right to be or to remain in the United States." 8 USC § 1357(a)(1). The statutory provision is limited by the Fourth Amendment. An INS Agent may not question any individual as to his or her right to be or to remain in the United States unless the INS Agent has a reasonable suspicion, based on specific articulable facts involving more than mere ethnic appearance, that the individual is an alien.

Judge Bunton held that the plaintiffs' Fourth and Fifth Amendment rights had been violated. He noted that the government's strong interest in enforcing immigration laws did not outweigh the rights of U.S. citizens and permanent residents to be free from unreasonable searches and seizures. "Respect for plaintiffs' constitutional rights is of paramount importance; otherwise, the vast majority of the population within the Bowie High School District, which is Hispanic, will continue to be subject to illegal stops, questioning, detentions, frisks, arrests, searches, and further abuses by the El Paso Border Patrol," he said. He pointed out that the Border Patrol has other means of patrolling the border area near the school without infringing on plaintiffs' constitutional rights.

Judge Bunton enjoined El Paso Border Patrol agents from stopping, detaining, and questioning individuals about their right to be or to remain in the U.S. unless the agents had "a reasonable suspicion, based on specific articulable facts involving more than the mere appearance of the individual being of Hispanic descent" that the person is either illegally in *324 the U.S. or is guilty of violating U.S. immigration laws. Judge Bunton also noted that the injunction did not extend to stops, detentions, and questioning during other legally authorized law enforcement functions, such as inspections or checkpoint activity, where reasonable suspicion is not required.

The plaintiffs were represented by Barbara Hines, Lee J. Teran, and Robert F. Greenblum of the Lawyers' Committee for Civil Rights Under Law of Texas, and El Paso attorney Albert Armendariz, Jr.

For more on the Fourth Amendment rights of aliens generally, see Chiao, "Fourth Amendment Limits On Immigration Law Enforcement," 93-2 Immigration Briefings (Feb. 1993).

[FN22]. The Texas Observer, Dec. 11, 1992, at 6. See also El Paso Herald-Post, Dec. 4, 1992, at A1, col. 1; The Dallas Morning News, Dec. 4, 1992, at 22B, col. 1.

END OF DOCUMENT