

## CBP/AMO - Civil Disturbance Flight Operations Summary<sup>1,2</sup>

*May 29th, 2020 - June 10th, 2020*

City, State	Flight Hours/Aircraft								Total Operational Hours
	(b) (7)(E)								
Aurora, IL	12.1								12.1
Buffalo, NY			38.3						38.3
Chicago, IL	12.6								12.6
Dayton, OH	1.3								1.3
Del Rio, TX	1.5						3.3		4.8
Detroit, MI	49.9		16.5						66.4
El Centro, CA	2.8				2.3				5.1
El Paso, TX	12.4							1.2	13.6
Miami, FL	13	9						2.5	24.5
Minneapolis, MN	3.2						2.3		5.5
New York, NY	10.4								10.4
Philadelphia, PA	6.8					2.3			9.1
Uvalde, TX	2.9								2.9
Washington, DC	29.2			3.7		2.5		12.9	48.3
Total Operational Hours	158.1	9	54.8	3.7	2.3	4.8	5.6	16.6	254.9

<sup>1</sup>Operational flight hours only, does not include aircraft repositioning/transit flights;

<sup>2</sup>Including aircraft repositioning/transit flight; total hours devoted to Civil Disturbance = 326.4 as of 06/10/20

Individual flight details located in "AMO Flight Details\_060520 Congressional Inquiry"

**SOURCE:** CBP BEMS Enterprise Reporting - AMO Taskings, Operations, and Management Information System (TOMIS)



**U.S. Customs and  
Border Protection**

April 6, 2020

MEMORANDUM FOR: See Distribution

THROUGH: William A. Ferrara  
Executive Assistant Commissioner  
Operations Support

(b)(6) (b)(7)(C)

FROM: (b) (6), (b) (7)(C) (b)(6) (b)(7)(C)  
Acting Director  
CBP Law Enforcement Safety and Compliance Directorate

SUBJECT: Addressing COVID-19 Use of Force Considerations

In order to fulfill CBP's mission, officers and agents are often times called upon to effect an arrest. On occasion, effecting an arrest requires the use of objectively reasonable force to gain a subject's compliance and/or to prevent imminent harm to the officer, agent or others. Frequently, the necessity to use force, especially less-lethal force, requires an officer or agent to be in direct proximity and in personal contact with individual(s).

In light of the health concerns of the COVID-19 pandemic<sup>1</sup>, the CDC's declaration stating any individual that may introduce COVID-19 into the U.S. is a danger to public health<sup>2</sup>, and the fact that such direct personal contact presents a significant potential threat to the officer or agent, the governmental interest in arresting that individual and preventing the individual from evading arrest is greatly increased. During a law enforcement encounter, if an officer or agent reasonably believes a subject may be infected with COVID-19, the threat of transmitting the virus to resist

<sup>1</sup> On March 20, 2020, the Center for Disease Control ("CDC") issued an Order Suspending the Introduction of Certain Persons from Countries Where Communicable Disease Exist. U.S. Department of Health and Human Services Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19)*. Accessed at <https://www.cdc.gov/grants/public-health-emergencies/covid-19/index.html>.

<sup>2</sup> In the order, the CDC cites the necessity to protect the public health from an increase in the serious danger of the introduction of COVID-19 into the land POEs and the Border Patrol Stations, at or near the United States borders with Canada and Mexico. The CDC found the order necessary to protect the public health from an increase in the serious danger of the introduction of COVID-19 into the interior of the United States. U.S. Department of Health and Human Services Centers for Disease Control and Prevention, *Orders Under Sections 363 & 356 of the Public Health Services Act (42 U.S.C. §§ 265, 268), Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists*. Order Issues March 20, 2020. Accessed at <https://www.cdc.gov/quarantine/order-suspending-introduction-certain-persons.html>

## COVID-19 Use of Force Considerations

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or evade arrest should be considered when establishing the immanency of a threat and the resulting determination of objectively reasonable force.

Officers and agents are authorized by law to use objectively reasonable force to effect the arrest. A subject who asserts they are infected with COVID-19, and presents pre-assaultive behavior while resisting the officer's or agent's attempts to effect an arrest, may present an increased risk of imminent harm. Officers/agents are encouraged to use available tools, tactics, and equipment to effect the arrest while limiting the amount of close contact with a non-compliant subject in accordance with CBP Use of Force Policy and U.S. Constitutional standards. The type/amount of force applied is situational specific and at the **reasonable** discretion of the officer or agent, given the information at the time and the foreseeable outcomes. As officers/agents make decisions with regard to use of force in response to ever evolving threats, great consideration should be given to the use of safe tactics, in addition to, the required calculation of the principles of *Graham v. Connor*:

- Whether the subject poses an imminent threat to the safety of the officer/agent or others;
- The severity of the crime at issue; and
- Whether the subject is actively resisting seizure or attempting to evade arrest by flight.

The use of safe tactics often requires the consideration of all available use of force options and the foreseeable outcomes of utilizing those options when making use of force decisions.

1. Empty hand techniques, OC spray, and the Collapsible Straight Baton (CSB), though effective, require close proximity to the subject and places the officer or agent at greater risk of being spat/coughed upon or having PPE forcibly removed in an altercation.
2. Electronic Control Weapons (ECWs) may offer the officer/agent an opportunity to deploy force outside the effective range of a subject's spit/cough. In some cases, neuromuscular incapacitation may render a subject unable to assault an officer or agent when close contact is required for handcuffing and mitigating exposure.
3. Compressed air and munition launchers, such as the PLS, FN303, and 40mm, are effective at greater ranges and provide officers and agents the option to engage subjects from a greater distance. However, the use of kinetic impact, without chemical payloads (e.g. 40mm Direct Impact Sponge Rounds), may greatly reduce the unintentional spread of the contagion caused by involuntary respiratory effects, such as uncontrollable coughing, and/or sneezing.

Regardless of force application options utilized, Officers and agents should practice extreme caution when making contact with individuals who are reasonably believed to be infected with COVID-19. Officers and agents should be cognizant when moving into close proximity to effect an arrest and should exercise caution when moving into an area where a subject has coughed and/or sneezed, as the virus may still be lingering in the air<sup>3</sup>. Precautions such as moving the

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<sup>3</sup> National Institutes of Health. "New Coronavirus Stable for Hours on Surfaces." National Institutes of Health (NIH), 17 Mar. 2020, <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>.

## COVID-19 Use of Force Considerations

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subject away from the contaminated area and the wearing of personal protective equipment (PPE) are preferred options.

Subjects claiming to have or appearing to have COVID-19 can present an elevated threat to CBP personnel and the public. Officers and agents should be prepared to manage these subjects and determine the appropriate force options when these individuals use the COVID-19 as a means to elevate the threat to an officer or agent and avoid apprehension. Any questions regarding this memorandum should be directed at (b)(7)(E).

Distribution: Commissioner  
Deputy Commissioner  
All Executive Assistant Commissioners  
Chief, U.S. Border Patrol  
All Assistant Commissioners  
Chief Counsel  
Executive Director, Privacy and Diversity Office  
Executive Director, Policy Directorate  
Executive Director, Planning, Analysis and Requirements Evaluations  
Executive Director, Laboratories and Scientific Services  
Executive Director, Intergovernmental Public Liaison  
Director, Information and Incident Coordination Center  
Director, Office of the Executive Secretariat  
Senior Advisor, Office of Trade Relations  
Chief of Staff  
Deputy Chief of Staff  
Deputy Chief of Staff (Policy)

**U.S. Customs and  
Border Protection**

MEMORANDUM FOR: See Distribution

THROUGH: William A. Ferrara  
Executive Assistant Commissioner  
Operations Support**(b)(6) (b)(7)(C)**FROM: **(b)(6) (b)(7)(C)** **(b)(6) (b)(7)(C)**  
Acting Director  
CBP Law Enforcement Safety and Compliance Directorate

SUBJECT: Addressing the Threat of Handheld Laser Assaults

The deliberate use of a Visible Light Laser (visible laser) against CBP law enforcement personnel carries with it a significant risk of serious and permanent bodily injury. Therefore, CBP officers/agents should be aware of the potential risks and consequences associated with eye exposure to these laser devices. Officers/agents must also understand the potential force applications that may be considered a reasonable response in light of the known risks of permanent bodily injury.

In these instances, as outlined herein, when lasers are used in an apparent attempt to harm officers or agents, objectively reasonable force may be used to gain a subject's compliance, effect an arrest, and/or to prevent imminent harm to the officer, agent, or others.

A handheld laser is a device that projects a highly concentrated narrow beam of light which is amplified to a great concentrated level of brightness through the use of simulated radiation. Typically, lasers that officers/agents are likely to encounter have three distinct colors; Blue – wavelength of 440 nm, Green- 532 nm, and Red- 640 nm. These lasers are commercially available and are used for a variety of purposes from pointing out items during a presentation, to guide tools, to actual use by medical professionals to perform surgical procedures. When an average commercial laser is shined on clothing, nothing happens, but when directed at camera lenses or human eyes, lasers become remarkably dangerous because of their concentrated energy.<sup>1</sup>

Exposure to laser light can cause significant damage to the eyes, typically in the form of burns and direct damage to the retina, which can cause permanent injury and blindness. Lasers with wavelengths from 400 nm to around 1400 nm (1.4 µm) travel directly through the eye's lens, cornea, and inter ocular fluid to reach the retina. When the laser energy is absorbed by the retina, it can cause permanent, although not always immediately noticeable, damage. Once a large

<sup>1</sup> Kim, Jeremiah. "Lasers: The Future of Protests." Harvard Political Review, 20 March 2019, <https://harvardpolitics.com/covers/magazine-spring-2020/lasers/>.

enough portion of the retina is damaged or the optical nerve is irradiated directly, the loss of vision becomes apparent. No laser is completely eye safe.<sup>2</sup>

The use of these lasers against law enforcement personnel is becoming a dangerously common occurrence. The classification of Class 3B and Class 4 handheld lasers, by industry manufacturers of such devices, as substantial hazards for permanent injury clearly indicates the potential harm for targeted individuals.<sup>3</sup> Additionally, the inability to distinguish between the classes of visible lasers, creates a dangerous situation for officers/agents as it may be impossible to fully evaluate the risks of injury. At a minimum, when officers/agents are the subjects of intentional targeting with handheld lasers, there may be a significant threat of injury to the eyesight of the targeted officer/agent. If the officer/agent is operating an aircraft or other conveyance, the threat is magnified as it may impact their ability to safely operate that conveyance. Therefore, if an officer/agent reasonably believes that a handheld laser is being used to attempt to cause serious bodily injury (for example, a subject attempts to direct the laser into the eyes of the officer/agent) the officer/agent should consider the imminence and severity of this threat in determining objectively reasonable force to prevent injuries to themselves or others.

Officers/agents are authorized by law to use objectively reasonable force to effect the arrest and protect against harm to the officer/agent or others. Officers/agents should consider all reasonable tools, tactics, and equipment to cease an assault with a handheld laser in accordance with CBP Use of Force Policy and U.S. Constitutional standards.

We further emphasize the use of a verbal warning before utilizing force, when feasible. If it is necessary to use force, the type/amount of force applied shall be based on the facts and circumstances reasonably known to the officer/agent at the moment the force is applied. As officers/agents make decisions with regard to use of force in response to ever evolving threats, great consideration should be given to the use of safe tactics and the required calculation of the principles of CBP policy and the law.

- Whether the subject poses an imminent threat to the safety of the officer/agent or others;
- The severity of the crime at issue; and
- Whether the subject is actively resisting seizure or attempting to evade arrest by flight.

Although the threat of serious and permanent bodily injury is real, absent extenuating circumstances that would drastically increase the imminent threat of serious bodily injury or death, CBP does not recognize the threat of handheld visible lasers as one that would require a deadly force response. The use of protective gear, safe tactics, and less lethal devices may provide more effective and reasonably foreseeable outcomes for the officer/agent and the subject when encountering the use of weaponized handheld visible lasers.

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<sup>2</sup> "Lasers and Eye Safety" Seminex Corporation, 2019, <https://seminex.com/lasers-and-eye-safety.aspx/>.

<sup>3</sup> Lee, Gregory D MD and Lally, David R MD. "Laser Pointer Retinal Injuries; Injury from laser pointer trauma is a public health problem on the rise." Retina Today, April 2015, <http://retinatoday.com/2015/04/laser-pointer-retinal-injuries/>.

## Addressing the Threat of Handheld Lasers

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- The use of laser eye protection may reduce the flash blindness of specific visible lasers, but may not provide complete protection from various colored lasers or the threat of permanent eye damage. - Please contact your local CBP OSH representative or the CBP Laser Safety Officer to address your local mission critical needs.
- When feasible, blinking or looking away may decrease the likelihood of injury. However, officers/agents should be cognizant of the potential hazards and risks associated with breaking visual tracking of this or other potential threats.
- Lasers are point-type weapons with a direct line of sight. The use of discriminate and specifically targeted kinetic impact less-lethal devices, such as PLS, FN-303, and 40MM launchers, may provide effective line of sight responses to prevent and cease visible laser assaults.

Although the threat of serious and permanent bodily injury from a laser is real, the presence and use of a laser by an adversary in and of itself does NOT justify a deadly use of force response. Every application of force by CBP personnel must be consistent with CBP use of force policy and law.

Any questions regarding this memorandum should be directed to the Law Enforcement Safety and Compliance Directorate at (b)(7)(E). Questions regarding Laser Safety should be referred to the Office of Human Resources, Occupational Safety and Health Division, CBP Radiation Safety Officer/ Laser Safety Officer at (b)(7)(E).

Distribution: Commissioner  
Deputy Commissioner  
All Executive Assistant Commissioners  
Chief, U.S. Border Patrol  
All Assistant Commissioners  
Chief Counsel  
Executive Director, Privacy and Diversity Office  
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Executive Director, Planning, Analysis and Requirements Evaluations  
Executive Director, Laboratories and Scientific Services  
Executive Director, Intergovernmental Public Liaison  
Director, Information and Incident Coordination Center  
Director, Office of the Executive Secretariat  
Senior Advisor, Office of Trade Relations  
Chief of Staff  
Deputy Chief of Staff  
Deputy Chief of Staff (Policy)

Item Description

(b)(7)(E)





City, State	USBP	OFO	OAM	OPR	OI	OPA	OIT
Alamogordo, NM	(b)(7)(E)						
Alpine, TX							
Atlanta, GA							
Aurora, IL							
Bemidji, MN							
Blythe, CA							
Buffalo, NY							
Casa Grande, AZ							
Chicago, IL							
Cleveland, OH							
DC, NCR							
Dayton, OH							
Del Rio, TX							
Detroit, MI							
El Centro, CA							
El Paso, TX							
Fargo, ND							
Grand Rapids, MI							
Grosse Ile, MI							
Houston, TX							
Kingsville, TX							
La Mesa, CA							
Las Cruces, NM							
Lincoln Park, MI							
Lockport, NY							
Miami, FL							
Midland, TX							
Minneapolis, MN							
New York City, NY							
Niagara, NY							
Philadelphia, PA							
Plattsburg, NY							
Port Clinton, OH							
Portland, OR							
Refugio, TX							
Riviera Beach, FL							
San Diego, CA							
Seattle, WA							
Spokane, WA							
Toledo, OH							
Tucson, AZ							
Westwood, NJ							
Whatcom Co., WA							

Whitefish, MT  
Wyandotte, MI  
Riverside, CA

Totals

(b)(7)(E)

Other= OPR (b)(7)(E) and OPA (b)(7)(E)