



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

AUG 12 2019

MEMORANDUM FOR: See Distribution

THROUGH: William A. Ferrara
Executive Assistant Commissioner
Operations Support

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

SUBJECT: Use of Force Policy Clarification – Emergency Situations

Generally, prior to being issued any U.S. Customs and Border Protection (CBP) authorized use of force device or firearm, the CBP Use of Force Policy mandates that all CBP law enforcement personnel receive training and demonstrate an acceptable level of proficiency on each of the devices or firearms they are issued. Failure to ensure the proper training of its personnel and/or require its personnel to demonstrate proficiency exposes the agency to allegations of negligent or inadequate training, judgment or supervision. Furthermore, officers and agents that carry or deploy use of force devices or firearms on which they have not received the appropriate training or demonstrated the required level of proficiency may also be found negligent. In either of the above cases, the agency may be liable under relevant tort law statutes. However, understanding the often unpredictable nature of law enforcement encounters, the CBP Use of Force Policy contains specific exceptions for emergency situations. The purpose of this memorandum is to clarify what constitutes an emergency situation.

An emergency situation can be defined as an unplanned event or exigent circumstance that occurs with no advanced warning, rapidly evolves, and which requires a reactive response to address an imminent threat. In such threatening and emergent situations, authorized officers and agents may use any available weapon in a manner that is reasonable, and necessary for self-defense or the defense of another person.¹ In these situations officers and agents must remember that the manner in which any less-lethal device or firearm is used must still comply with the objectively reasonableness analysis to which all law enforcement uses of force are subjected. For instance, deadly force must not be used unless there is a reasonable belief that the subject of such force poses an imminent threat of death or serious physical injury.

¹ CBP Use of Force Policy, Guidelines and Procedures Handbook, Office of Training and Development, HB 4500-01C, Chapter 4: *Guidelines and Procedures on the Use of Less Lethal Force*, at 37.

Use of Force Policy Clarification – Emergency Situations

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In contrast, an emergency situation does not exist when the agency has advance notice, with time to plan operations and prepare for incidents that may occur in the near future. As a proactive measure to address potential threats, officers or agents must not be issued, carry, or use a less-lethal device or firearm for which they have not met the minimum training and proficiency standards.

In addition to the training and proficiency requirements listed above, CBP law enforcement personnel may only be issued and carry use of force devices or firearms that are listed on the Authorized Equipment List.

Please feel free to contact me if you have any questions. If members of your staff have any questions, they may contact (b)(6) (b)(7)(C), Acting Director, LESC, at (b)(6) (b)(7)(C) or email (b)(6) (b)(7)(C)

Distribution: Commissioner
Deputy Commissioner
Executive Assistant Commissioners
Chief, U.S. Border Patrol
Assistant Commissioners

From:

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

To:

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

Cc:

[LESC Command](#)

Subject:

LESC DC Deployment

Date:

Wednesday, June 3, 2020 4:17:14 PM

Attachments:

[Deployment Calendar.xlsx](#)

[Distribution Team List - 6-4-2020.xlsx](#)

Team,

First of all, a heartfelt thank you to you and your staff for the assistance with the efforts in DC this week. As this situation continues to be fluid, we need to adjust to maximize our support, but at the same time ensuring we as a leadership team are looking out for the safety and well-being of our staff. This morning we notified the BP EOC that the LESC is standing down one of the deployment teams tonight. We did initially receive pushback, but (b)(6) (b)(7)(C) deftly handled the situation and was able to justify the request. As we don't know how long our support will be needed, moving forward the "all hands on deck" response below is implemented beginning tomorrow, June 4, 2020:

- Increased total LESC LEO support (b)(7)(E)
- Created a (b)(7)(E) deployment team

(b)(7)(E)

- Created a deployment schedule ensuring Teams will deploy (b)(7)(E)
However, all (b)(7)(E) teams will be ready to deploy if necessary.
- Continue to supply rifles and less-lethal devices and staff (b)(7)(E) located at the RRB.
- When not deployed, the Teams will assist with the increased demand with LESC warehouse operations as a result of the civil unrest.

I have attached the new rosters for the respective teams and a deployment schedule. (b)(6) (b)(7)(C) and I did the best we could dividing the teams and attempted to attain a balance from each LESC branch on each team. Unfortunately it was unavoidable, so some LESC staff will be deploying for a fourth consecutive night tomorrow. Also please note we are no longer utilizing the Team designations Alpha and Bravo as it was causing some confusion.

In addition, the following individuals will need to attend the required OCC legal brief tomorrow in the **ATC Auditorium at 1130** and stop by the LESC front office to fill in the required information on the Deployment Team Rosters we need to submit daily to the EOC.

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

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

Finally, per the attached deployment calendar, (b)(7)(E) will deploy tomorrow. As of right now, departure time from the ATC will be 1400 hrs.

Thank You,

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

Acting Director

U.S. Customs & Border Protection

Law Enforcement Safety & Compliance (LESC)

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

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

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

[Visit our SharePoint site for more information on LESC programs.](#)

Deployment Cycle

Law Enforcement Safety and Compliance
Civil Protest Response Calendar

PAYPERIOD	11	11	11	11	11	11	12	12	12	12	12
DAY	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday
DATE	6/1/2020	6/2/2020	6/3/2020	6/4/2020	6/5/2020	6/6/2020	6/7/2020	6/8/2020	6/9/2020	6/10/2020	6/11/2020

(b)(7)(E)

TIMES OF ACTIVITY

STAGING											
REPORTING											
DEMOBILIZE											
END OF MISSION											

(b) (6), (b) (7)(C), (b) (7)(E)





**U.S. Customs and
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AUG 12 2019

MEMORANDUM FOR: See Distribution (b)(6) (b)(7)(C)

THROUGH: William A. Ferrara
Executive Assistant Commissioner
Operations Support (b)(6) (b)(7)(C)

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

SUBJECT: Testing, Evaluation, Approval, Procurement, and Implementation
of CBP Use of Force Equipment

The Office of Inspector General (OIG) conducted an examination of circumstances surrounding U.S. Customs and Border Protection's (CBP) use of force near the San Ysidro, California, Port of Entry on November 25, 2018, and January 1, 2019, to determine whether CBP complied with its use of force policy.

Based on the OIG's Notice of Findings and Recommendations, the Law Enforcement Safety and Compliance Directorate (LESC) is issuing the following guidance on the general principles for testing, evaluating, approving, procuring, and utilizing any use of force equipment by CBP personnel:

1. To have a specific piece of equipment reviewed for consideration, testing, evaluation, and possible addition to the Authorized Equipment List (AEL), CBP operational components are provided procedures in the AEL;
2. New use of force equipment is not authorized until a determination has been made by LESC as to its reliability, functionality and intended purpose;
3. The Director of the LESC authorizes use of force equipment for CBP and publishes authorized equipment in the AEL; and
4. The head of a CBP operational component approves which equipment from the AEL her/his personnel may implement for field use.

Operational components must exercise extreme caution and consult with the LESC when seeking to employ equipment that is not intended to be used as a use of force device, but which has use of force capabilities, such as the Long Range Acoustic Device (LRAD). The LRAD has two modes, one which is not a use of force and is designed for long range communications (e.g. voice commands, directions, or information), the other, a high decibel tone, which is a use of force.

Testing, Evaluation, Approval, Procurement, and Implementation of CBP Use of Force
Equipment
Page 2

Thorough testing and evaluation by LESC to determine suitability for field deployment must be completed prior to authorization and subsequent approval as a use of force device. If the use of force capability of the equipment is not authorized, controls must be put in place to disengage the use of force capability in order to eliminate any risk posed to the public at large.

Supporting documentation for these principles is published and can be referenced in the CBP Use of Force Policy, Guidelines and Procedures Handbook (HB 4500-01C), Chapter 2, and the CBP AEL, Chapter 1.

Please feel free to contact me if you have any questions. If members of your staff have any questions, they may contact (b)(6) (b)(7)(C), Acting Director, LESC, at (b)(6) (b)(7)(C) or email (b)(6) (b)(7)(C).

Distribution: Commissioner
Deputy Commissioner
Executive Assistant Commissioners
Chief, U.S. Border Patrol
Assistant Commissioners

From: (b) (6), (b) (7)(C)
To: (b) (6), (b) (7)(C)
Subject: RE: DC- Response- Black and Tans Approved
Date: Monday, June 1, 2020 12:26:00 PM

Just come in b/t, so we all look the same anyway.

From: (b) (6), (b) (7)(C)
Sent: Monday, June 1, 2020 12:26 PM
To: (b) (6), (b) (7)(C)
Subject: RE: DC- Response- Black and Tans Approved

Had a question on multicam?

VR,

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

From: (b) (6), (b) (7)(C)
Sent: Monday, June 1, 2020 12:24 PM
To: LESC Staff (b) (7)(E)
Subject: DC- Response- Black and Tans Approved

(b) (6), (b) (7)(C)
Acting Deputy Director
U.S. Customs and Border Protection
Law Enforcement Safety and Compliance

(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C) Office
(b) (6), (b) (7)(C) Cell
(b) (6), (b) (7)(C)