

This Handbook provides policies and procedures developed in consultation with ICE Counsel. However, new situations and questions develop continually.

When questions arise related to legal matters and associated undercover policies,

- A. OI operational management will contact the Undercover Operations Unit to determine whether the issue has been previously addressed by Headquarters ICE Counsel and/or existing policy; and
- B. if the issue has not been addressed and the question implicates a national policy or an issue likely to occur in more than one area, the Undercover Operations Unit will request that Headquarters ICE Counsel provide an opinion and/or develop new policies as needed; or
- C. if the issue is determined to be of local concern, operational management will contact the local ICE Counsel to request guidance. The local ICE Counsel will coordinate with Headquarters ICE Counsel as necessary.

3.2 Participation in Otherwise Illegal Activities

Except when authorized pursuant to ICE policy and this Handbook, no undercover operative will participate in any activity that would constitute a crime under federal, state, or local law if engaged in by a private person acting without authorization. For the purposes of this Handbook, such activity is referred to as an “otherwise illegal activity.” The Special Agent in Charge (SAC) will consider, and approve when appropriate, participation by an undercover operative in otherwise illegal activity only when such participation is justified.

3.2.1 Justification

Possible justifications for otherwise illegal activity include the need to:

- A. obtain information or evidence necessary to the success of an investigation not reasonably available without participation in the otherwise illegal activity;
- B. establish or maintain credibility of a cover identity where that credibility is required for the investigative and/or operational activity and/or the safety of the undercover agent or any other person; or
- C. prevent death or serious bodily injury to any person.

3.2.2 Minimization

The SAC shall ensure that reasonable steps are taken to minimize the participation of an undercover operative in any otherwise illegal activity.