



U.S. Immigration
and Customs
Enforcement

Public Affairs Guidance

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HSI Collection of DNA Samples

BACKGROUND:

In January 2009, a U.S. Department of Justice (DOJ) regulation, pursuant to 42 U.S.C § 14135a(a)(1)(A), went into effect amending regulations on DNA sample collection by federal law enforcement agencies. Under this rule, all federal law enforcement agencies are required to take DNA samples from "individuals who are arrested, facing charges or convicted, and from non-United States persons who are detained under the authority of the United States." In March 2009, Secretary Napolitano directed each Department of Homeland Security (DHS) operational component to create an implementation plan to ensure compliance with the DOJ regulation.

ICE is the first component within DHS to comply with DOJ's rule and will begin a phased approach for implementation of the DNA sampling process. Homeland Security Investigation (HSI) special agents in three Special Agent in Charge (SAC) offices - SAC San Diego, SAC San Juan and SAC St. Paul - have received the necessary training and equipment to collect DNA samples. During the initial implementation, samples will be collected only from individuals arrested on federal or state criminal violations by an HSI special agent. All DNA samples will involve two swabs of the cheek inside the mouth.

Individuals arrested by an HSI special agent on state or federal criminal charges are required to give a DNA sample. It is a federal offense for an individual from whom DNA sample collection is authorized to refuse to cooperate in the collection of a sample. Furthermore, cooperation with the collection of a sample is a mandatory condition of pretrial release. Any DNA sample collected will be sent immediately to the Federal Bureau of Investigation's crime lab for analysis. ICE will not retain any DNA samples.

TALKING POINTS:

- The collection of a DNA sample from an individual arrested by an HSI special agent on a criminal charge brings the agency in compliance with DOJ requirements on DNA sample collection by federal law enforcement agencies.
- ICE is the first DHS component to begin implementing DNA sampling.
- Special agents in the SAC offices in San Diego, San Juan and St. Paul have been trained to collect DNA samples from those arrested on federal or state criminal charges.

- It is a federal offense for an individual from whom DNA sample collection is authorized to refuse to cooperate in the collection of a sample. All DNA samples will involve two swabs of the cheek inside the mouth.
- All DNA samples collected by HSI special agents will be sent immediately to the Federal Bureau of Investigation's (FBI) crime lab for analysis. ICE will not retain any DNA samples.

Q and A's:

Why is ICE collecting DNS samples?

Federal law enforcement agencies are required to take DNA samples from certain individuals pursuant to 42 U.S.C § 14135a(a)(1)(A). ICE is the first agency within DHS to comply with this requirement.

When will ICE begin collecting the DNA samples?

Collection of the DNA samples will begin in the three designated SAC offices – San Diego, San Juan and St. Paul – within 30 days of June 15, 2010. Agents in these three offices have received the necessary training and equipment to begin implementing the collection of DNA samples.

Is the individual who has been arrested on a state or federal criminal charge required to give a DNA sample?

Yes. 42 U.S.C § 14135a(a)(5) establishes criminal penalties to be imposed against an individual from whom DNA sample collection is authorized, but who refuses to cooperate in the collection of a sample. 18 U.S.C § 3142(b) and (c)(1)(A) mandates that cooperation in the DNA sample collection process is a condition of pretrial release.

Will all HSI special agents be required to collect DNA samples?

Yes, but not at this time. This is a pilot program that currently involves three HSI SAC offices. The pilot program is expected to continue at least until the end of 2010 at these locations before expansion to any other SAC office is considered.

Will Enforcement and Removal Operations (ERO) law enforcement personnel be required to collect DNA samples?

Yes, but not at this time. Currently, only three HSI SAC offices are involved in this pilot program. No ERO offices are involved in DNA sample collection at this time.

Will DNA samples be taken from individuals in ICE custody for administrative immigration violations?

At this time, HSI special agents will only obtain DNA samples from criminal arrestees. DHS and DOJ are currently in the process of determining additional categories of individuals from whom DNA samples will be taken.

When will more SAC offices be required to collect DNA samples?

Because ICE is taking a phased approach to complying with the DNA collection requirement, the first phase will be evaluated in six month so that adjustments to the process can be made. No specific timeline is available for an HSI- or ICE-wide implementation.

Who pays for the DNA collection?

All costs associated with collecting DNA samples, including the kits and shipping costs to the FBI crime lab, are paid by the FBI.

Why is the collection of DNA beneficial?

When ICE collects a DNA sample, it is added to the FBI crime lab's repository of DNA samples. Because DNA can be used to link suspects and criminal evidence, the gathering and sharing of this genetic information can be a valuable investigative tool within the law enforcement community.

ICE

U.S. Immigration and Customs Enforcement (ICE) is the largest investigative arm of the Department of Homeland Security. ICE is a 21st century law enforcement agency with broad responsibilities for a number of key homeland security priorities. For more information, visit: www.ICE.gov. To report suspicious activity, call 1-866-347-2423.