

Department of Homeland Security
Office of Intelligence and Analysis
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DHS INTELLIGENCE AND ANALYSIS DUTY TO WARN

I. Purpose

This Instruction fulfills requirements within Intelligence Community Directive 191 by establishing the Office of Intelligence and Analysis (I&A) guidance for consistent implementation of the requirement to warn specific individuals or groups of impending threats of intentional killing, serious bodily injury, or kidnapping (hereafter referred to as *Duty to Warn*).

II. Scope

This Instruction applies to all I&A personnel, including detailees and contractors.

III. References

- A. National Security Act of 1947, July 26, 1947, as amended.
- B. Intelligence Reform and Terrorism Prevention Act of 2004, December 17, 2004, as amended.
- C. Executive Order 12333, "United States Intelligence Activities," December 4, 1981, as amended.
- D. Executive Order 13388, "Further Strengthening the Sharing of Terrorism Information to Protect Americans," October 25, 2005.
- E. Intelligence Community Directive (ICD) 191, "Duty to Warn," July 21, 2015, as amended.
- F. Intelligence Community Directive (ICD) 209, "Tearline Production and Dissemination," September 6, 2012.

IV. Definitions

- A. **Duty to Warn**: The requirement to warn U.S. and non-U.S. persons of impending threats of intentional killing, serious bodily injury, or kidnapping.

- B. **Intended Victim**: The target of credible and specific information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at a person or group of people, an institution, place of business, structure, or location. This term includes both U.S. persons, as defined in EO 12333, Section 3.5(k), and non-U.S. persons.
- C. **Intentional Killing**: The deliberate killing of a specific individual or group of individuals.
- D. **Serious Bodily Injury**: An injury that creates a substantial risk of death or which causes serious, permanent disfigurement or impairment.
- E. **Kidnapping**: The intentional taking of an individual or group through force or threat of force.

V. Responsibilities

- A. The **Under Secretary for Intelligence and Analysis** oversees the Duty to Warn processes and facilitates resolution of internal disputes regarding a determination to warn an intended victim or waive the Duty to Warn requirement, including resolution of internal disputes regarding the method for communicating the threat information to the intended victim.
- B. The **Principal Deputy Under Secretary for Intelligence and Analysis**, in consultation with the Associate General Counsel for Intelligence, is the responsible senior officer for making waiver determinations.
- C. The **Deputy Under Secretary for Intelligence Enterprise Operations (DUSIEO)**, or designee, is the responsible senior officer for oversight of threat information determined to meet Duty to Warn requirements.
- D. The **Director and/or designee(s) Current and Emerging Threats Center** are the responsible officials for reviewing and approving initial information for Duty to Warn determination, to ensure information is credible and specific, so as to permit a meaningful warning.
- E. The **Current and Emerging Threats Center (CETC)** receives Duty to Warn requests and notifies CETC Director and/or designee(s) for approval to initiate Duty to Warn procedures recording all Duty to Warn actions per section VI.E. The CETC Watch is the point-of-contact.
- F. **I&A personnel, detailees and contractors** who initially identify credible and specific information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping of an individual or group immediately report this information through their chain of command or in

the case of exigent circumstances, directly to the CETC for official review and affirmation.

VI. Content and Procedures

If at any time I&A collects or acquires credible and specific information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at an intended victim, I&A has a Duty to Warn the intended victim or those responsible for protecting the intended victim, as appropriate. See Appendix for the process flowchart.

- A. **Threshold and Documentation:** Issues concerning whether threat information meets the Duty to Warn threshold are resolved in favor of informing the intended victim if none of the justifications for waiver are met.
1. The Duty to Warn process occurs in a timely manner and takes precedence over all other routine matters.
 2. I&A personnel identifying information they believe related to an impending threat pass that information via their chain of command or, in cases of exigent circumstances directly to the CETC Watch.
 3. The CETC Watch notifies the CETC Director and/or Deputy Director(s) of the request for Duty to Warn actions.
 4. CETC Director and/or Deputy Director(s) reviews the information to affirm that it is credible and specific, so as to permit a meaningful warning and approves CETC Watch to initiate Duty to Warn procedures.
 5. When the information is affirmed and the Duty to Warn has not been waived, the CETC Watch documents the threat information and the basis for the Duty to Warn determination, prepares for approval an unclassified tearline, where possible for use in delivering the threat information to the intended victim.
 6. Tearlines for delivery to the intended victim are not to include information that identifies sources and methods involved in acquiring the information and are to be consistent with ICD 209, *Tearline Production and Dissemination*.
 7. Where the CETC Director and/or Deputy Director(s) affirms that the information is credible and specific, but believes that a waiver of the Duty to Warn may be appropriate, the CETC Director and/or Deputy Director(s) briefs the information and waiver recommendation to the PDUSIA, who in consultation with the

Associate General Counsel for Intelligence, determines whether there is sufficient justification to waive the Duty to Warn, and documents the information and waiver determination.

- B. **Communication:** Upon determination by the CETC Director and/or Deputy Director(s) that a Duty to Warn exists and has not been waived, the communication of threat information to the intended victim can be delivered in person or through other verifiable means consistent with any direction provided by the DUSIEO or designee.
1. If the intended victim is located in the United States and its territories, CETC consults with the Federal Bureau of Investigation (FBI) to determine how best to communicate threat information to the intended victim.
 - a. As appropriate and in synchronization with the FBI, I&A leverages communication mechanisms available through the DHS Intelligence Enterprise (IE), and State, Local, Tribal, Territorial, and Private sector partners (SLTTP).
 2. If the intended victim is located outside the United States and its territories, CETC consults with the Chief of Station to determine how best to communicate threat information to the intended victim.
 - a. As appropriate and in synchronization with the Chief of Station, I&A leverages communication mechanisms available through Diplomatic Security, and the Overseas Advisory Council (OSAC).
 3. If the intended victim is a United States Secret Service (USSS) Protectee, or the DHS Deputy Secretary while on overseas travel, CETC informs the USSS, as well as the FBI or Chief of Station.
- C. **Origination of Information:** When I&A personnel identify threat information they believe rises to the Duty to Warn threshold and the information originated with another Intelligence Community element, I&A personnel provide the applicable information to CETC. CETC notifies the originating element, which determines if a Duty to Warn exists and if so, provides the warning and takes any other appropriate action in compliance with ICD 191. The originating element shall also inform CETC of its determination and the course of action taken per ICD 191.
1. When I&A personnel identify threat information they believe rises to the Duty to Warn threshold and the information originated with another DHS component or source to which I&A has unique access, I&A personnel provide the applicable information to CETC.

CETC notifies the originating component or source, requesting notification of the originator's intentions/actions regarding warning. Where CETC is notified that the originator does not intend to warn the intended victim, that information is passed to the CETC Director and/or Deputy Director(s) for consideration and appropriate action.

- D. **Exigent Threat:** When a threat is so imminent as to render consultation or notification impracticable, CETC delivers the threat information to an intended victim in an expeditious manner without prior consultation or notification.
1. Notification of the delivery of the threat information is made to the FBI or the Chief of Station as appropriate, and to the originating element within five days after informing the intended victim.
- E. **Records:** CETC documents and maintains records of all Duty to Warn actions including, but not limited to:
1. The method, means, and substance of warning given;
 2. The senior officer who reviewed the threat information and their determination;
 3. Coordination with the FBI or Chief of Station to determine how best to pass threat information to the intended victim;
 4. Coordination with another DHS component, Government agency or source regarding delivery of threat information to the intended victim;
 5. When the information originated with another DHS component or source to which I&A has unique access, notification to the originating element of how and when threat information was delivered to the intended victim;
 6. Any decisions to warn the intended victim in light of exigent circumstances that precluded prior consultation; and
 7. Justification not to warn an intended victim based on the waiver criteria identified in section VI.F.
- F. **Waiver:** I&A can waive the Duty to Warn responsibility. Examples of criteria for consideration include, but are not limited to:
1. The intended victim, or those responsible for ensuring the intended victim's safety, are already aware of the specific threat;

2. The intended victim is at risk only as a result of the intended victim's participation in an insurgency, insurrection, or other armed conflict;
 3. There is a reasonable basis for believing that the intended victim is a terrorist, a direct supporter of terrorism, an assassin, a drug trafficker, or involved in violent crimes;
 4. Any attempt to warn the intended victim would unduly endanger U.S. Government personnel, sources, methods, intelligence operations, or defense operations;
 5. The information was acquired from a foreign government with whom the U.S. has formal agreements or liaison relationships, and any attempt to warn the intended victim would unduly endanger the personnel, sources, methods, intelligence operations, or defense operations of that foreign government; or
 6. There is no reasonable way to warn the intended victim.
- G. **Disputes:** Resolution of disputes, both within DHS and among Intelligence Community elements, regarding a determination to warn an intended victim or waive the Duty to Warn requirement, or regarding the method for communicating the threat information to the intended victim occurs at the lowest practical and authorized level.
1. Dispute resolution occurs in a manner that does not unnecessarily delay the timely notification of threat information to the intended victim.
 2. If unresolved below the USIA level, the matter will be elevated expeditiously to the USIA for resolution.

VII. Questions

Questions or concerns regarding this Instruction should be addressed to the Current and Emerging Threats Center.

Appendix: Duty to Warn Process Flowchart

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Under Secretary for Intelligence and Analysis

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Date

Appendix: Duty to Warn Process Flowchart

