



A Continuum of Force
Francesco Levato

FIG. 1

A Continuum of Force

Francesco Levato

Locofoco Chaps
Chicago, 2017

Copyright © 2017 Francesco Levato

Locofo Chaps is an imprint of Moria Books.

More information can be found at

www.moriapoetry.com.

Cover image: from United States Patent US 6,636,412 B2, *Hand-Held Stun Gun for Incapacitating a Human Target*

Locofo Chaps is dedicated to publishing politically-oriented poetry.

Chicago, USA, 2017

Contents

Policy.01	1
Policy.02	4
Policy.03	8
Policy.04	11
Policy.05	13
Policy.06	15
Policy.07	18
Policy.08	24

Author's note:

A Continuum of Force is a documentary poetics project that examines the material implications of Latin American *otherness* as constructed through U.S. policy, specifically via the erasure of the U.S. Customs and Border Protection's *Use of Force Policy, Guidelines and Procedures Handbook*—a set of policies that discursively constructs a criminalized *other* while authorizing physical harm to that other.

Policy.01

FOREWORD FROM THE COMMISSIONER

U.S. Customs and Border Protection is entrusted with the **critical** responsibility of protecting our nation's borders. **This mandate** carries with it **the authority** to use force up to and including the use of deadly force. The following policy provides guidance and parameters under which force may be used. It also provides the levels of oversight when force is used and the ongoing training and demonstration of decision making and skill surrounding **the use of force**.

A respect for human life and the communities we serve shall guide all employees in the performance of their duties. Authorized Officers and Agents should employ enforcement **tactics** and techniques that effectively bring an incident under control, while minimizing the risk for injury or property damage. **The use of excessive force** by CBP law enforcement personnel is strictly prohibited.

As CBP employees, **this Handbook** serves as your **authoritative** reference for firearms procedures and use of force related issues. By conforming to **standard** use of force policies, procedures, training, and equipment, Authorized Officers and Agents can more effectively protect themselves and the public they serve.

Authorized Officers and Agents who encounter use of force issues in the field that are not addressed in this *Handbook* are expected to exercise reasonable judgment.

CBP adheres to the *Department of Homeland Security Policy on the Use of Deadly Force* and the *Department of Homeland Security Commitment to Nondiscriminatory Law Enforcement and Screening Activities* policy statement, both of which are **attached as appendices and referenced throughout the body** of this *Handbook*.

Violation of the *CBP Use of Force Policy, Guidelines and Procedures Handbook* may constitute grounds for disciplinary action.

This *Handbook* sets forth guidance for CBP employees, and does not create or confer any right, privilege, or benefit for any person, party or entity. United States v. Caceres, 440 U.S. 741 (1979).

R. Gil Kerlikowske
Commissioner
U.S. Customs and Border Protection

I. Policy on the Use of Force By CBP Officers and Agents

A. General Guidelines

1. CBP policy on the use of force by Authorized Officers/Agents is derived from constitutional law, as interpreted by federal courts in cases such as Graham v. Connor, 490 U.S. 386 (1989) and Tennessee v. Garner, 471 U.S. 1 (1985), federal statutes and applicable DHS and CBP policies.
2. Authorized Officers/Agents may use "objectively reasonable" force only when it is necessary to carry out their law enforcement duties.
3. The "reasonableness" of a particular use of force is based on the totality of circumstances known by the officer/agent at the time of the use of force and weighs the actions of the officer/agent against the rights of the subject in light of the circumstances surrounding the event. Reasonableness will be judged from the perspective of a reasonable officer/agent on the scene, rather than with the 20/20 vision of hindsight.
4. The calculus of reasonableness embodies an allowance for the fact that law enforcement officers/agents are often forced to make split-second decisions - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation.
5. A use of force is "necessary" when it is reasonably required to carry out the Authorized Officer's/Agent's law enforcement duties in a given situation, considering the totality of facts and circumstances of such particular situation. A use of deadly force is 'necessary' when the officer/agent has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer/agent or to another person.
6. An Authorized Officer/Agent may have to rapidly escalate or de-escalate through use of force options, depending on the totality of facts and circumstances of the particular situation.
7. Based on the totality of circumstances, different officers/agents may have different responses to the same situation, any of which may be both reasonable and necessary. The level of force applied must reflect the totality of circumstances surrounding the situation, including the presence of imminent danger to the officer/agent or others.
8. If feasible, and if to do so would not increase the danger to the officer/agent or others, a verbal warning to submit to the authority of the officer/agent shall be given prior to the use of force. If a particular situation allows for the issuance of a verbal warning, the officer/agent:

- a. Should have a reasonable basis to believe that the subject can comprehend and comply with the warning; and
 - b. Allow sufficient time between the warning and the use of force to give the subject a reasonable opportunity to voluntarily comply with the warning.
9. Following any incident involving the use of force, Authorized Officers/Agents shall seek medical assistance for any person who appears, or claims to be, injured.

B. Objectively Reasonable and the Totality of Circumstances

1. The reasonableness inquiry for an application of force is an objective one: the question is whether the officer's/agent's actions are objectively reasonable in light of the totality of facts and circumstances confronting him or her, without regard to **underlying intent** or motivation.
2. In determining whether a use of force is "objectively reasonable" an **Authorized Officer/Agent** must give careful attention to the totality of facts and circumstances of each particular case, including:
 - a. Whether the subject poses an **imminent** threat to the safety of the officer/agent or others;
 - b. **The severity of** the crime at issue;
 - c. Whether the subject is actively **resisting** seizure or attempting to evade arrest by flight;
 - d. Whether the circumstances are tense, uncertain and rapidly evolving; and
 - e. **The foreseeable risk of** injury to involved subjects and **others**
3. Totality of circumstances refers to all factors existing in each individual case. In addition to those listed in subsection B.2, these factors may include (but are not limited to):
 - a. The training, mental attitude, age, size and strength of the officer/agent;
 - b. The training, mental attitude, age, size and strength of the subject;
 - c. The weapon(s) involved;
 - d. The presence of other officers/agents, subjects or bystanders; and
 - e. Environmental conditions.

Policy.02

C. Use of Less-Lethal Force¹

1. Less-lethal force is force that is not likely to cause serious physical injury or death.
2. Any use of less-lethal force must be both **objectively reasonable** and necessary in order to carry out the Authorized Officer's/Agent's law enforcement duties.
3. Less-lethal devices/weapons may be **used** in situations **where** empty-hand techniques are not sufficient to control disorderly or violent subjects.

D. Use of Deadly Force

1. Deadly force is force that is likely to cause serious physical injury or death.
2. The *Department of Homeland Security Policy on the Use of Deadly Force* governs the use of deadly force by all DHS employees.
3. Authorized Officers/Agents may use deadly force only when necessary, that is, when the officer/agent has a reasonable belief that the subject of such force poses an imminent danger of serious physical injury or death to the officer/agent or to another person.
 - a. Serious Physical Injury - Injury which creates a substantial risk of death or which causes serious **disfigurement**, serious **impairment** of health or serious **loss** or impairment of the function of any **bodily organ** or **structure** or involves serious concussive impact to **the** head.
4. Except in **limited circumstances** during air or marine enforcement operations, discharging a firearm as a warning or signal is prohibited. Discharging a firearm at a person shall be done only with **the intent of stopping that person** from continuing the threatening behavior **that justifies the use** of deadly force.
5. Deadly force is not authorized solely to prevent the escape of a fleeing subject. Deadly force against a fleeing subject is only authorized if there is probable cause to believe that:
 - a. The subject has inflicted or threatens to inflict serious physical injury or death to the officer/agent or to another person; **and**
 - b. The escape of the subject poses an imminent threat of serious physical injury or death to the officer/agent or to another person.

¹ Referenced in prior versions of CBP policy or applicable regulations as "intermediate force" or "non-deadly force" and used herein with the same purpose and effect.

6. Authorized Officers/Agents shall not discharge their firearms at the operator of a moving vehicle, vessel or aircraft unless deadly force is necessary – that is, when the officer/agent has a reasonable belief that the operator poses an imminent danger of serious physical injury or death to the officer/agent or to another person.
 - a. Such deadly force may include a moving vehicle aimed at officers/agents or others present, but would not include a moving vehicle merely fleeing from officers/agents unless the vehicle or the escape of the subject poses an imminent threat of serious physical injury or death to the officer/agent or to another person.
 - b. The hazard of an uncontrolled conveyance shall be taken into consideration prior to the use of deadly force.
7. Firearms shall not be fired solely to disable motor vehicles, vessels, aircraft or other conveyances. The only exception is that Authorized Officers/Agents, when conducting maritime law enforcement operations, may use specifically authorized firearms and ammunition to disable moving vessels or other maritime conveyances.
8. Deadly force may be **directed** against dangerous or vicious animals in self-defense or in defense of another person.
9. Deadly force may also be **used to euthanize** an animal that appears to be seriously injured or diseased. In doing so, the Authorized Officer/Agent must be able **to justify** the use of deadly force **to prevent** the animal from additional suffering, **eliminate** a public health risk or to **ensure public safety**.
10. **The act of establishing a grip, drawing a weapon or pointing a weapon does not constitute the use of deadly force.**

E. The CBP Use of Force Continuum

1. **The CBP Use of Force Continuum is an instructional model used to describe the levels of force an Authorized Officer/Agent may need to utilize to gain control over a resistant subject**
2. While it describes each of the different levels of force that may be used in response to subject behavior, it is not necessary to mechanically apply every step of the CBP Use of Force Continuum.
3. An Authorized Officer/Agent may have to rapidly escalate or de-escalate through the Continuum, depending on the totality of facts and circumstances of the particular situation.

4. Levels of Subject Behavior/Resistance:

- a. Compliant - A subject who is compliant/cooperative with an Authorized Officer's/Agent's control efforts.
- b. Passive Resistance - A subject who is not believed to represent an immediate threat or flight risk, and who is not offering physical resistance to an Authorized Officer's/Agent's control efforts, but is not cooperative.
- c. Active Resistance - A subject who offers physical or mechanical resistance to an Authorized Officer's/Agent's control efforts.
 - (1) Mechanical Resistance - **A type of** active resistance, where a subject uses a mechanical or other object to resist an officer/agent's control efforts. The subject's efforts are not directed toward the officer/agent but rather appear intended to thwart an officer's/agent's control efforts by physically securing or holding to another object.
- d. Assaultive Resistance (Physical Injury) - A subject whose resistance causes, or has the potential to cause, physical injury to the officer/agent, others, or self. This includes a subject's attempts (or **apparent intent**) to make physical contact in an attempt to control or assault the officer/agent.
- e. Assaultive Resistance (Serious Physical Injury/Death) - A subject whose resistance causes, or has the potential to cause, serious physical injury or death to **the** officer/agent, others, or self.

5. Levels of Officer/Agent Response:

- a. Cooperative Controls - Measures (including verbal commands) used to maintain control over a compliant subject.
- b. Contact Controls - **Physical measures** taken when verbal commands and officer presence are not effective in gaining compliance. Contact controls may include measures such as strategic positioning, escort holds, joint manipulation or immobilization or touch pressure point stimulation.
- c. Compliance Techniques - Actions **taken** when the subject is actively resisting the efforts of the officer/agent to establish and maintain control. Examples of compliance techniques include the use of Oleoresin Capsicum (OC) spray, strike pressure points, stunning techniques, takedowns, joint manipulations and use of an Electronic Control Weapon (ECW).

- d. Defensive Tactics - Actions taken when a subject has either assaulted the officer/agent or is displaying a willingness and intent to do so. Examples of defensive tactics are concentrated strikes involving the use of empty-hand techniques (e.g., the use of body parts as weapons), the Collapsible Straight Baton (CSB) and the ECW.
- e. Deadly Force - Actions taken when an Authorized Officer/Agent has a reasonable belief that the subject of such force poses an imminent danger of serious physical injury or death to the officer/agent or to another person.

F. Use of Safe Tactics

- 1. Authorized Officers/Agents should seek to employ enforcement tactics and techniques that effectively bring an incident under control, while promoting the safety of the officer/agent and the public, and minimizing the risk for unintended injury and/or property damage.
- 2. Except where otherwise required by inspections or other operations, Authorized Officers/Agents should avoid standing directly in front of or behind **a subject vehicle**. Officers/agents should not place themselves in the path of a moving vehicle or use **their body** to block a vehicle's path.
- 3. Authorized Officers/Agents should, whenever reasonable, avoid placing themselves in positions where they have **no alternative** to using deadly force.
- 4. Authorized Officers/Agents shall not discharge their firearms in **response** to thrown or launched projectiles unless the officer/agent has a reasonable belief, based on the totality of circumstances (to include the size and nature of the projectiles), that the subject of such force poses an imminent danger of serious physical injury or death to the officer/agent or to another person.

Officers/agents may be able to obtain a tactical advantage in these situations, through measures such as seeking cover or distancing themselves from the immediate area of danger.

G. DHS Commitment to Nondiscriminatory Law Enforcement and Screening Activities

- 1. The DHS *Commitment to Nondiscriminatory Law Enforcement and Screening Activities* policy statement is applicable to all situations where officers/agents exercise their use of force authority.

Policy.03

II. Operational Guidelines and Administrative Procedures

Chapter 1: Authorized Officers/Agents and the Authority to Carry Firearms

A. Authorized Officers/Agents

1. For the purposes of this *Handbook*, the term “Authorized Officers/Agents” includes:
 - a. CBP Officers;
 - b. Border Patrol Agents;
 - c. Air and Marine Officers and Agents;
 - d. Internal Affairs Special Agents and Investigators; and
 - e. Other qualified CBP personnel as designated by the Assistant Commissioners of the operational components, or the Chief, Office of Border Patrol (hereinafter referred to as “Assistant Commissioners” or “ACs”), the Commissioner and the Director of UFCE.

A component Assistant Commissioner (AC) may request an individual designation by submitting a written justification requesting this designation to the Commissioner, through the AC of the Office of Training and Development (OTD). This justification shall be forwarded to the Director of UFCE for comment prior to submission to the Commissioner.

2. Additional qualified CBP personnel may be designated as armed personnel by the ACs of the operational components, the Commissioner and the Director of UFCE, but are not considered to be Authorized Officers/Agents.

A component Assistant Commissioner (AC) may request an individual designation by submitting a written justification requesting this designation to the Commissioner, through the AC of the Office of Training and Development (OTD). This justification shall be forwarded to the Director of UFCE for comment prior to submission to the Commissioner.

- a. All such personnel are required, in accordance with the requirements of Chapter 6, to demonstrate their proficiency in the use of each of the CBP firearms that they are issued.

B. Authority to Carry CBP-Issued Firearms

1. The **authority** to carry a CBP-issued firearm is **provided** by federal law, including 8 U.S.C. § 1357, 8 C.F.R. § 287.8 and § 287.9, and 19 U.S.C. § 1589(a). Such carriage, whether on or off duty, is **governed** by this *Handbook* and applicable CBP policy.
2. To carry CBP-issued firearms, Authorized Officers/Agents must:
 - a. Be designated to carry a firearm, **individually or as a class**, by the Commissioner of CBP;
 - b. Be issued a badge, and CBP credentials that authorize the carrier to bear firearms;
 - c. Have successfully completed the basic law enforcement training required as a condition of employment with CBP, including basic firearms training, or have successfully completed a substantially equivalent training program approved by the AC of OTD and the Director of UFCE;
 - d. Maintain proficiency, as set forth in [Chapter 6](#) of this *Handbook*, in the use of firearms they are permitted to carry and adhere to **the provisions of the policy** governing the use of force; and
 - e. Meet all other **requirements and standards** set forth in **this *Handbook***.

C. Carriage of CBP-Issued Firearms

1. Authorized Officers/Agents are required to carry a CBP-issued handgun during duty hours while performing **uniformed law enforcement** duties, except when operational circumstances preclude the carriage of a firearm (e.g., when operating in restricted areas).
2. Only those firearms listed on the UFCE Authorized Equipment List (and specifically approved by the AC of each operational component) may be carried while on duty.
 - a. Authorized Officers/Agents are not authorized to carry any personally-owned firearms while on duty.
 - b. In threatening, emergent situations, Authorized Officers/Agents are authorized to use any available weapon in a manner that is reasonable and necessary for self-defense or the defense of another person. However, this statement does not authorize the carrying of any weapon for duty use that is not authorized and listed on the UFCE Authorized Equipment List (or **specifically approved** by the Director of UFCE).

3. Authorized Officers/Agents may carry their CBP-issued firearms twenty-four hours a day (including off-duty) in accordance with the provisions of this *Handbook*.
4. Authorized Officers/Agents, when carrying a CBP-issued firearm(s), are required **to carry** their CBP badge and credentials authorizing them **to bear** firearms. This requirement does not apply to officers/agents involved in an authorized undercover operation or when approved in writing by the officer's/agent's immediate supervisor.
5. Authorized Officers/Agents shall carry their CBP-issued handgun(s) fully loaded at all times. Semiautomatic pistols shall be carried with **a round in the chamber** and the **magazine** loaded to capacity. When authorized, revolvers shall be carried with all chambers loaded.
6. Only CBP-issued/approved ammunition may be used in CBP firearms.
7. Authorized Officers/Agents, when in uniform and on-duty, shall carry a minimum of two, **fully loaded** spare magazines for their primary handgun.
8. An Authorized Officer/Agent shall be issued only one primary handgun. Based upon availability, and with the **concurrence** of the AC of that operational component, an officer/agent may be issued a subcompact handgun **as** a secondary handgun.
 - a. An Authorized Officer/Agent shall not be issued more than two handguns without the concurrence of AC of the **operational component** and the Director of UFCE.
9. Except as provided herein, Authorized Officers/Agents shall carry only one handgun on their person at a time. **Written** authorization **to** carry two handguns at the same time must be **obtained** from the Responsible Official (RO) with the concurrence of the **respective** operational component AC.
10. Based on the duty assignment, Authorized Officers/Agents may be issued shoulder-fired weapons (SFWs) as determined necessary by the operational component ACs (or their designees).
11. Based on operational needs and requirements, a RO may require that Authorized Officers/Agents carry shoulder-fired weapons (SFWs) while performing specified uniformed law enforcement duties.
12. In special circumstances, when unarmed CBP personnel are required to provide service in areas of substantial risk, armed Authorized Officer/Agents shall provide an appropriate level of security, up to and including the formation of a security detail.

Policy.04

13. Only Authorized Officers/Agents may discharge a CBP-issued firearm, except during CBP-authorized training, events or activities and military or law enforcement joint operations.

D. Flying Armed on a Commercial Aircraft

1. Authorized Officers/Agents may carry their CBP-issued firearms in the cabin of commercial aircraft in accordance with **applicable regulations**, policies and procedures.²
2. Each officer/agent who carries a CBP-issued firearm while traveling on board a commercial aircraft must complete the CBP-approved Law Enforcement Officers Flying Armed training course. This course will be readily available to all officers/agents.
3. Any Authorized Officer/Agent traveling aboard an aircraft while armed must at all times keep their CBP-issued firearm:
 - a. **Concealed and out of view**, either on their person or in immediate reach, if the officer/agent is not in uniform; or
 - b. On their person, if the officer/agent is in uniform.
4. No officer/agent may place **a weapon** in an **overhead** storage bin.
5. Under no circumstances shall an Authorized Officer/Agent relinquish their CBP-issued handgun to the pilot or any member of the flight crew, or allow the weapon to be stored in the crew compartment of the aircraft.
 - a. If an officer/agent is **directed** by anyone to check their handgun, the officer/agent should request assistance from the appropriate security officials in order to resolve the issue: first, the airport's Ground Security Coordinator (GSC) and then the TSA Federal Security Director (FSD).
 - b. Any officer/agent who has been **denied** boarding shall notify their immediate supervisor at the earliest practicable time. A written report of this denial shall be forwarded to the Director of UFCE, through the RO, outlining **the details of the occurrence**

E. Alcohol and Medication

1. Authorized Officers/Agents are prohibited from consuming alcoholic beverages while carrying CBP-issued weapons, except when engaged in authorized undercover activities necessitating the consumption of alcoholic beverages.

² Carriage of firearms aboard aircraft is governed by 49 C.F.R. § 1544.219: Carriage of accessible weapons.

In these cases, the consumption of alcoholic beverages shall be **limited to an amount that does not impair** the officer's/agent's judgment.

2. Authorized Officers/Agents shall not carry a firearm while taking medication that impairs their judgment and/or ability to safely carry, control or use a firearm.

F. Revocation of Authorization to Carry CBP-Issued Firearms

1. The authority to carry a CBP-issued firearm may be temporarily or permanently revoked by the CBP Commissioner, an AC of an operational component or by the appropriate Responsible Official (RO). The authority to carry may also be temporarily revoked by a CBP supervisor.
2. Temporary revocations will be based on reliable evidence. Permanent revocations will be based on substantiated evidence.
3. Credentials may be temporarily or permanently revoked by the CBP Commissioner, AC of an operational component or the appropriate RO.
 - a. The revocation of credentials results in the automatic revocation of the authorization to carry a CBP-issued firearm.
 - b. The revocation of the authorization to carry a firearm does not automatically result in the revocation of credentials.
4. Situations that warrant the temporary or permanent revocation of the authority to carry firearms and/or credentials include (but are not limited to):
 - a. **The failure to demonstrate** proficiency with firearm(s) or other mandatory training requirements without an authorized exemption;
 - b. Medical conditions that impede the safe and effective use of a firearm. In such circumstances the Authorized Officers/Agents may have the authorization to carry a firearm temporarily revoked. A medical evaluation in accordance with regulations shall take place before a permanent revocation occurs;
 - c. Evidence of substance abuse;
 - d. Evidence of the commission of a felony;
 - e. Evidence of (including an arrest or conviction for) **the commission of an act of domestic violence** (see [Chapter 1.G](#)) or **the existence of a protective order** related to acts of domestic violence (see [Chapter 1.G.3](#));
 - f. **Evidence of unlawful violent behavior, or behavior that indicates that the individual may be a danger to themselves or others;**

Policy.05

- g. Evidence of serious **breaches** of **CBP integrity** or security policies;
 - h. Evidence of a credible threat to use a firearm in **an unlawful manner**, and/or
 - i. If an RO determines that the revocation is in **the best interests of CBP** and/or the officer/agent. Such **authority** will be reasonably exercised.
5. When the authority to carry a CBP-issued firearm(s) is temporarily revoked by a supervisor, the supervisor shall (within 24 hours of **such action**):
- a. Provide written notification to the RO of the action **taken**, identifying the officer/agent involved and documenting the circumstances supporting the revocation determination.
6. When the authority to carry a CBP-issued firearm is revoked, the RO shall provide the officer/agent with a written notification explaining:
- a. **The reason(s)** for the revocation;
 - b. **The nexus between their conduct** (performance or condition) **and the threat to the safety** of the employee or others;
 - c. Any limitations on the performance of duties; and
 - d. The duration (or anticipated duration) of the revocation.

This written notification will be provided as soon as practicable.

7. When the authority to carry a CBP-issued firearm is temporarily or permanently revoked, Authorized Officers/Agents shall not perform duties or assignments that normally require the carriage of a firearm.
- a. Permanent revocation of firearms and/or credentials may be grounds for reduction in grade, reassignment or removal, as determined appropriate by CBP.
8. If the revocation of a CBP-issued firearm(s) extends beyond seventy-two (72) hours it shall be recorded in the Firearms, Armor and Credentials Tracking System (FACTS).
9. Authorized Officers/Agents whose authority to carry a CBP-issued firearm has been temporarily revoked due to any of the circumstances listed in Chapter 1.F.4 or any officer/agent suspended indefinitely while under investigation shall turn in all CBP-issued firearms and ammunition to the appropriate coordinator.

G. Domestic Violence and the Authority to Carry Firearms

1. It is the responsibility of any armed CBP employee who is arrested for, or charged with, a crime of domestic violence to promptly report their arrest or charge to their immediate supervisor.
2. During the period pending disposition of the domestic violence case (following an arrest or charge for, and until the case has been resolved by the appropriate legal authority) CBP employees shall not be permitted to possess or carry any CBP-issued firearms or ammunition.
 - a. The armed employee's supervisor shall ensure that all CBP-issued firearms and ammunition are immediately turned in for storage.
3. Protective Orders – For purposes of this *Handbook*, a **protective order** related to domestic violence shall be considered to be a pending domestic violence case (and therefore subject to **the restrictions** of subsection G.2 above) if **the order**:
 - a. Was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
 - b. Restrains such person from **harassing, stalking, or threatening an intimate partner** of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - c. Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.
4. Pursuant to 18 U.S.C. § 922(g)(9), it is illegal for anyone, including a federal law enforcement officer, who has been convicted of a **misdemeanor crime** of domestic violence to possess any firearm or ammunition.

H. Carriage of Personally-Owned Firearms Off-Duty

1. Nothing in this *Handbook* shall be **construed as** interfering with the rights that Authorized Officers/Agents may have as private citizens to carry a personally-owned firearm off-duty for personal use. Authorized Officers/Agents must comply with all applicable federal, state and local laws when exercising any such rights.
2. Guidance on CBP policy **regarding the off-duty carriage of personally-owned** firearms may be found in the Commissioner's Memorandum, *The Law Enforcement Officers Safety Act (LEOSA)*, dated August 13, 2013, attached as [Appendix V](#).

Policy.06

Chapter 2: Authorizing and Approving Officials

A. Responsible Officials (ROs)

1. A RO is responsible for the **implementation** of the CBP use of force program and for **ensuring compliance** with the *CBP Use of Force Policy, Guidelines and Procedures Handbook* by all Authorized Officers/Agents within his or her **area of responsibility**.
2. Each RO has **primary** responsibility for inventory **control**, maintenance, and security of all CBP use of force equipment within his or her area of responsibility.
3. Each RO shall designate a Firearms Coordinator (FCO) to manage the firearms and ammunition program within his or her area of responsibility (see [Chapter 11](#)). These designees are responsible for overseeing the shipment, receipt, issuance and the periodic inventory of use of force equipment.
4. The ROs are:
 - a. Assistant Commissioners of CBP Operational Components (ACs), and the Chief, Office of Border Patrol (OBP);
 - b. Chief Patrol Agents (CPA);
 - c. Directors, Field Operations (DFO);
 - d. Directors, Air Operations and Marine Operations (DAO, DMO);
 - e. Division Directors, Internal Affairs (IA);
 - f. Division Directors, Office of Training and Development (OTD); and
 - g. Other officials designated in writing by the Commissioner.

B. The Director of the Use of Force Center of Excellence (UFCE)

1. The Director of UFCE has primary responsibility to:
 - a. Direct all aspects of the CBP use of force and firearms program, including less-lethal equipment;
 - b. Direct the development and implementation of CBP use of force and firearms policies and procedures;

- c. Direct the technical and evaluation aspects of the CBP use of force and firearms programs;
 - d. Direct the development of the **training curriculum** and the training of **CBP firearms** instructors, armorers, less-lethal instructors and other related training;
 - e. Direct the review of **field use of force** training and training programs;
 - f. Direct **the** review of use of force incidents, in order to review and/or improve CBP training, **tactics**, policy and equipment;
 - g. Direct the collection and storage of **qualification** and instructor certification records;
 - h. Establish the procedures for the selection, training, and certification of armorers, firearms instructors, less-lethal instructors, and other advanced instructors;
 - i. Oversee all CBP armories and direct **the** maintenance, repair, and alteration of all CBP-issued and **authorized** firearms;
 - j. Oversee the control and accountability of all firearms, ammunition, ordnance, less-lethal devices and **body** armor; and
 - k. Maintain a list of authorized weapons, holsters, ammunition, equipment **and** accessories.
2. The Director of UFCE is responsible for overseeing the **acquisition** of all CBP-issued firearms, ammunition, **ordnance**, less-lethal equipment and body armor.
 3. No CBP component or individual officer/agent or employee is authorized to solicit, accept or otherwise acquire or dispose of CBP-issued firearms, or other use of force equipment that is accountable in the Firearms, Armor and Credentials Tracking System (FACTS), outside of authorized CBP equipment procurement and distribution **procedure**: for any CBP purpose or operation without the written **consent** of the Director of UFCE.

C. The UFCE Incident Review Committee

1. The UFCE Incident Review Committee is authorized to review any incident in which use of force is employed, whether by a CBP employee or directed at an employee.
 - a. Any use of deadly force by a CBP employee against a person shall be reviewed by the Committee.

2. The primary role of this Committee is to allow qualified experts an opportunity to perform an internal analysis of these incidents from a perspective of training, tactics, policy and equipment. Accordingly, this Committee will not make any recommendations concerning disciplinary or adverse actions.
3. Through a deliberative process, the Committee will identify trends that may impact the use of force procedures and policies employed by CBP to protect its personnel property and operations
4. The UFCE Incident Review Committee members are:
 - a. The Director of UFCE, who serves as committee chair; and
 - b. Designated representative(s) from each CBP operational component.
5. The UFCE Incident Review Committee shall meet on a quarterly basis, and additionally at the discretion of the Director of UFCE when sufficient use of force incident data is assembled to warrant the convening of the Committee.
6. Quarterly, the Committee shall submit a report outlining findings and recommendations, as appropriate, to the CBP Commissioner.

Policy.07

Chapter 3: Guidelines and Procedures Following the Use of Deadly Force

A. Responsibilities Following a Use of Deadly Force

1. Any use of deadly force shall be orally reported to a CBP supervisor:
 - a. Unless the employee is physically incapacitated or otherwise unable, the report shall be made within one hour of the time the incident occurs.

The report shall be made either in person, or via radio or telephone, and shall be comprised of the following information (if known):

- (1) The date, time, and location of the incident;
 - (2) The **identity** and current location of any **injured** or deceased person(s), an **assessment of the extent** of their injuries and whether medical assistance has been requested;
 - (3) The identity, **physical description**, and current location of any individual(s) **known** to be involved in, or **to have witnessed** the incident, including subjects who are at large;
 - (4) The description and location of conveyances involved in the incident, including any subject conveyance(s);
 - (5) A brief description of the incident, including any unusual circumstance(s) which might cause additional conflicts or confrontations;
 - (6) The operational activity in which the Authorized Officer/Agent or employee(s) involved in the incident was engaged;
 - (7) When firearms are used: **the type of firearm(s)**, **the number of shots** fired, and the current location of all firearms used in the incident;
 - (8) **Any other information that is needed to assure** that the operational responsibilities of CBP related to the security of human life and CBP equipment are properly carried out.
2. Any Authorized Officer/Agent who observes or becomes aware of a use of deadly force, and has a reasonable belief that the incident has not yet been reported, shall orally report the incident to a supervisor as soon as practicable.
 3. Following the initial reporting of the incident, an employee who learns of additional information concerning the items listed in Chapter 3.A.1.a shall, as soon as practicable, make an oral report of such information to a supervisor.

4. CBP Supervisor - Upon notification of a use of deadly force, a supervisor shall:
 - a. Secure the incident scene, and seek medical assistance for any person who appears, or claims to be, injured.
 - b. Ensure that all CBP employees who were involved in the incident have been identified and advised that they will be interviewed by investigative personnel and that they are to remain on-duty until released;
 - c. Make an initial report via established **chain of command**.
 - (1) The initial supervisory report shall contain **a summary of the incident** and shall be made within one hour of receipt of the first employee report.
 - (2) The report shall be made through official channels, but the report shall not be delayed when observance of the chain-of-command is impractical.
 - d. Report **the** incident to CBP HQ via the Commissioner's Situation Room in accordance with CBP **Directive** 3340-025D (or any successor policy);
 - e. Notify **the** Office of Internal **Affairs** via the Joint Intake Center (JIC), and via notification to the duty agent of the specific IA regional office with responsibility for that area of operations;
 - f. Notify the Office of Human Resources Drug Program Coordinator;
 - g. Assume on-scene responsibility for media contacts. Supervisors should, as soon as practicable, seek assistance from their public affairs officer. Media should be provided reasonable access to the scene, with preservation of evidence and efficient operations determining **the limits of reasonable access**
 - h. Provide to the RO, within one hour of the arrival of CBP management or the investigative team at the scene of the incident, a preliminary report of the status of the situation, including updated information regarding the condition of injured persons and the employee(s) involved in the incident.
 - i. Report the use of force in the CBP Use of Force Reporting System (UFRS) on CBPnet. Initial reports should be submitted/completed in the system within 72 hours.
5. Prior to any investigative interview of involved personnel, on-scene responsible supervisory personnel shall:
 - a. Ensure that supervisors and/or investigators are aware that if an employee uses deadly force, he or she is prohibited from making a written statement regarding the incident. Other CBP personnel on scene may be required to provide a written statement regarding the incident;

- b. Ensure that when **any bargaining unit** employee is **compelled by or through** CBP and/or DHS to provide any information that could reasonably lead to disciplinary action against that employee (other than the initial verbal notification outlined herein), he or she is advised in writing of his or her right to Union representation in accordance with the applicable provisions of the law and governing Collective Bargaining Agreement;
 - c. Ensure that supervisory or investigative officers involved in **the** investigation of a use of force incident are aware that any information provided by any employee under **threat of disciplinary action** by CBP, or compelled by any other means, may be subject to exclusion from criminal proceedings consistent with the standards outlined in Garrity v. New Jersey, 385 U.S. 493 (1966);
 - d. In appropriate circumstances, and upon proper authorization, employees will be provided “Kalkines” warnings consistent with Kalkines v. U.S., 473 F.2d 1391 (Ct. Cl 1973) informing them of the **requirement to cooperate** in management’s examination when the employee has been assured that he or she will not be subject to criminal action;
 - (1) After receiving such assurances, an employee’s failure to cooperate in an administrative investigation may result in disciplinary action up to and including removal.
 - e. If an employee requests to consult with an attorney, normally no questioning to the employee will occur until his/her attorney is present. Questioning of an employee without an attorney being present after the employee has requested an attorney be present may result in not being able to take criminal action against the employee; and
 - f. If involved employee interviews cannot be conducted within a reasonable period of time, or the employee is physically or mentally unable to participate in the interview, the investigative team supervisor, or designee, shall direct the necessary rescheduling for this requirement.
6. Responsible Officials (ROs) - Upon notification of a use of deadly force, the RO (or his or her designee) shall:
- a. Ensure that **the incident scene** (and **all relevant evidence**) are **secured**, and that medical attention is provided for any individual injured;
 - b. Ensure that information regarding the deadly force incident is **collected and reported in accordance** with Chapter 3.A.1;
 - c. Ensure that the incident has been reported to the law enforcement authorities having jurisdiction over the investigation, and that they have been advised of CBP’s desire to maintain liaison during the investigation;

- d. For incidents involving detailed/TDY CBP personnel, the RO shall also notify the detailed personnel's permanent command element of a use of deadly force incident involving one or more of their personnel. The RO assumes responsibility for the employee(s) involved as if the personnel were permanently assigned within the RO's jurisdiction;
 - e. Until the incident is resolved, the RO shall be responsible for responding to requests for information about the incident from the public, the media, and other agencies with a "need to know," after coordinating such information releases with the Office of Public Affairs; and
 - f. Following the initial report of the incident and during **the ensuing investigation**, the RO shall ensure that copies of all investigative reports, any other pertinent documents and copies of all printed and televised media reports are provided through chain of command;
7. All use of force incidents involving CBP personnel shall be reported via the established chain of command in the **geographic jurisdiction where the incident occurred**.
 8. Following the submission of the initial supervisory report, any supervisor or other CBP management official who receives additional information regarding the incident shall, as soon as practicable, report such information to the RO and to the Commissioner's Situation Room in accordance with CBP Directive 3340-025D (or any successor policy).
 9. If any CBP employee becomes aware of **apparent misconduct or violation** of CBP policy regarding the use of force, that employee shall notify the Office of Internal Affairs via the Joint Intake Center (JIC).

B. Reporting the Discharge of a Firearm

1. Authorized Officers/Agents (and other armed CBP employees) must report the following firearms discharges:
 - a. **Any** discharge of a CBP-issued firearm (including unintentional discharges) except for intentional discharges which occur during firearms training, **practice**, or qualification, and do not cause any injury to a person or animal, or unintentional damage to private, public, or government property; or
 - b. A discharge of any firearm that:
 - (1) Is in violation of any law or ordinance, or causes an investigation by any law enforcement agency;
 - (2) Is, or reasonably appears to be, discharged in an unsafe or reckless manner due to impairment caused by the consumption of alcohol or drugs;

- (3) Is **an act of assault** against any Authorized Officer/Agent, or employee, and **the assault is**, or reasonably appears to be, related to his or her CBP employment; or
 - (4) Is a discharge of a firearm by a law **enforcement officer other** than an Authorized Officer/Agent, when the discharge occurs during multi-agency operations involving CBP personnel.
2. Any reportable discharge not involving the use of deadly force shall be reported through the chain of command and through the CBP Use of Force Reporting System (UFRS) on CBPnet. Initial reports should be submitted/completed in the system within 72 hours.
 - a. **At the discretion of the RO**, a **local** investigation/review (consistent with the requirements of Chapter 5) may be initiated.
3. After any discharge (either intentional or unintentional) of a CBP-issued firearm where a firearm malfunction is suspected, the RO must immediately send the firearm and ammunition to the appropriate UFCE facility for examination (unless the firearm is required for an ongoing federal, state or local law enforcement investigation or legal action).
 - a. To send a firearm to the UFCE facility, ensure that the firearm and magazine are unloaded and that they have NOT been cleaned or disassembled prior to shipping.
4. When an employee is required to relinquish his or her CBP-issued firearm, but the authority to carry a firearm has not been revoked, he or she shall promptly be provided with:
 - a. A replacement CBP-issued firearm; and
 - b. The opportunity to familiarize himself or herself with the replacement firearm under the supervision of a Firearms Instructor (FI).

The employee shall qualify with the replacement firearm as soon as practicable.
5. A shooter-induced unintentional discharge, for which the employee acknowledges responsibility, does not require the firearm be sent to the UFCE facility.
 - a. Post-incident safety and function remedial training shall be provided and documented by the local FI. The documentation shall be included in the incident investigation file.

C. Employee Assistance Program (EAP)

1. **EAP is available to assist all CBP Officers, Agents and employees, and the use of EAP is strongly encouraged.**
2. When an Authorized Officer/Agent uses deadly force against a person, either on or off-duty, the officer/agent shall (after providing incident information in accordance with the requirements of Chapter 3.A.1) be placed on Administrative Leave with pay and/or regularly scheduled days off for three consecutive calendar days immediately following the incident.

During this period, the officer/agent shall, at a minimum, participate in a confidential initial consultation conducted by an EAP (or other CBP-provided) counselor.

3. A supervisor shall advise all officers/agents involved in **a deadly force** incident that EAP is available for consultation. This service is confidential and is not **part of the** investigative process its sole purpose is to assist the employee in dealing with **the traumatic** incident.
4. If an employee avails himself/herself of EAP services under subsection 3, the employee shall be granted duty time **consistent with operational requirements**
5. The RO shall ensure that an EAP counselor is available for consultation as needed.

Policy.08

Chapter 4: Guidelines and Procedures on the Use of Less-Lethal Force

A. General Guidelines and Responsibilities

1. **The Policy on the Use of Force By CBP Officers and Agents** governs the use of force by all Authorized Officers/Agents. The policy is contained in Part I of this *Handbook*.
2. In accordance with the requirements of **the Policy**, any use of less-lethal force must be both objectively reasonable and **necessary** in order to carry out the officer's/agent's law enforcement duties.
3. Authorized Officers/Agents³ who are trained and UFCE-certified in **their** use may use the following less-lethal devices/techniques:
 - a. **Empty-Hand Strikes**;
 - b. Oleoresin Capsicum (OC) Spray;
 - c. Collapsible **Straight Batons** (CSB);
 - d. Electronic Control Weapons (ECW);
 - e. Compressed Air **Launchers** (e.g., PLS, FN303);
 - f. Mmunition Launchers (e.g., 40mm);
 - g. Less-Lethal Specialty Impact - **Chemical** Munitions (LLSI-CM);
 - h. **Controlled** Tire Deflation Devices (CTDD); or
 - i. Other less-lethal devices approved by the AC of their operational component, with the concurrence of the Director of UFCE.
4. While performing uniformed law enforcement duties, Authorized Officers/Agents who carry firearms are required to carry either OC Spray or a CSB.
 - a. An officer/agent who is certified in both less-lethal devices may choose to carry either or both.

³ Additional qualified CBP personnel may be authorized (either individually, or as a class, by the Commissioner of CBP) to carry and use less-lethal devices/techniques. All such personnel are required, in accordance with the requirements of [Chapter 6](#), to demonstrate their proficiency in the use of each of the devices that they are issued.

- b. An officer/agent who is only certified in one less-lethal device shall carry only that device.
5. Based on operational needs and requirements, a RO may require that Authorized Officers/Agents carry additional less-lethal devices (that they are certified to carry) while performing specified uniformed law enforcement duties.

B. Reporting the Use of Less-Lethal Force

1. Authorized Officers/Agents - Authorized Officers/Agents shall report all incidents involving the use of less-lethal force (not resulting in serious physical injury or death) by:
 - a. Verbal Report - Officers/agents shall orally report any use of less-lethal force to a CBP supervisor. Unless the employee is physically incapacitated or otherwise unable, the report shall be made within one (1) hour of the time the incident occurs or within one (1) hour of the time the employee becomes aware of the incident.

The report shall be made either in person, or via radio or telephone, and shall be comprised of the following information (if known):

- (1) The date, the time and the location of the incident;
 - (2) The less-lethal device(s) used by the officer/agent and subject;
 - (3) **The nature and the extent of any injuries claimed** or observed and whether medical assistance has been requested; and
 - (4) The name, date of birth, and physical location of the subject(s).
- b. Written Report/Memorandum - Officers/agents shall submit a written memorandum regarding the use of force incident through the chain of command.⁴ Unless the employee is physically incapacitated or otherwise unable, the memorandum shall be made by the end of the work shift.
 - (1) The memorandum shall describe in detail **the circumstances** of the incident, including **the actions** of the subject **necessitating** the use of force and the specific force used in response to the subject's actions. Any injuries or complaint of injuries, and any medical treatment or refusal of medical treatment, shall be documented.

⁴ When any bargaining unit employee is compelled by or through CBP and/or DHS to provide any information that could reasonably lead to disciplinary action against that employee, he or she has a right to Union representation in accordance with the applicable provisions of the law and governing Collective Bargaining Agreement.

- c. UFRS Report - Involved Officers/Agents shall also report uses of less-lethal force through the CBP Use of Force Reporting System (UFRS) on CBPnet. Initial reports should be entered into the system within 24 hours.
2. CBP Supervisor - Upon notification of a use of less-lethal force, the supervisor shall:
- a. Verbal Report - Make an initial report via **established chain** of command;
 - (1) The initial supervisory report shall contain a summary of the incident and shall be made within one (1) hour of receipt of the first employee report.
 - (2) The report shall be made through official channels, but the report shall not be delayed when **observance of** the chain-of-command is impractical.
 - b. Written Report - CBP supervisors shall submit a preliminary written report through the chain of **command** by the end of the work shift.
 - c. Involved Officer/Agent Memorandum - CBP supervisors shall review the involved officer's/agent's memorandum to ensure that it is consistent with the requirements outlined in Chapter 4.B.1.b.1.
 - d. UFRS Report - CBP supervisors shall review the involved officer's/agent's report in the CBP Use of Force Reporting System (UFRS) on CBPnet, and submit/approve **the** report in the system (or forward for approval based on local procedure). Reports should be **submitted** approved within 72 hours.
 - e. Supervisors should ensure that when any bargaining unit employee is **compelled** by or through CBP and/or DHS to provide any information that could reasonably lead to disciplinary action against that employee (other than the initial verbal notification outlined herein), he or she is advised in writing of his or her right to Union representation in accordance with **the** applicable provisions of the law and governing Collective Bargaining Agreement.
 - (1) Any information provided by any employee under threat of **disciplinary** action by CBP or compelled by any other means, may be subject to **exclusion** from criminal proceedings consistent with the standards outlined in Garrity v. New Jersey, 385 U.S. 493 (1966).
 - (2) In appropriate circumstances, and upon proper authorization, employees will be provided "Kalkines" warnings consistent with Kalkines v. U.S., 473 F.2d 1391 (Ct. Cl 1973) informing them of the requirement to cooperate in management's examination when the employee has been assured that he or she will not be subject to criminal action.

After receiving such assurances, an employee's **failure** to cooperate in an administrative investigation may result in disciplinary action up to and including removal.

3. If any CBP employee becomes aware of apparent misconduct or **violation** of CBP policy regarding the use of force, that employee shall notify the Office of Internal Affairs via the Joint Intake Center (JIC).

4. Use of Less-Lethal Force Resulting in Serious Physical Injury or Death

Any use of less-lethal force that results in serious physical injury or death shall follow the procedures for reporting the use of deadly force.

5. Use of a Less-Lethal Device as Deadly Force

Any use of a less-lethal device as deadly force (used in a manner likely to cause serious physical injury or death) shall follow **the procedures** for reporting the use of deadly force.

C. Use of Less-Lethal Devices/Techniques

1. Guidelines and Responsibilities

The following guidelines and responsibilities apply to all CBP less-lethal devices, systems and associated equipment. Additional device-specific guidelines are contained in the following subsections.

- a. Less-lethal devices may be **deployed** only by trained and certified CBP law enforcement personnel, and only in accordance with manufacturer's specifications and applicable DHS and CBP policy.
- b. A less-lethal device is not a substitute for the use of deadly force. This, however, does not preclude the use of a less-lethal device (or any other weapon) for this purpose if **the** use of deadly force would otherwise be **objectively reasonable**
- c. Only less-lethal devices, systems and associated equipment authorized by UFCE **shall be carried** and deployed by Authorized Officers/Agents.
- d. If practical, CBP supervisory personnel **shall** photograph or videotape any marks or injuries resulting from the use of less-lethal devices.
 - (1) If the marks or alleged injuries to **be documented** are on a private portion of **the subject's body**, CBP personnel shall make reasonable efforts to ensure privacy before the documentation is recorded. In that instance (to the extent possible) the recording must be made by an officer/agent of the same gender as the subject.

- e. Less-lethal devices, systems and associated equipment shall not be altered in any way without the written authorization of the Director of UFCE.
 - f. UFCE shall be responsible for development and approval of less-lethal device training materials and certification standards.
 - g. Authorized Officers/Agents are responsible for the general care and safeguarding of the less-lethal devices and equipment issued to them, and may be subject to disciplinary action for any loss or damage resulting from negligence by the officer/agent.
 - h. Less-lethal devices, systems and/or associated equipment shall be inventoried, transferred, and excessed shall be inventoried/accounted for in accordance with the requirements of Chapter 8.
 - i. Less-lethal devices, systems and/or associated equipment shall only be purchased through contracts and procedures established by UFCE. Purchase Card purchases of less-lethal equipment is prohibited without written approval from the Director of UFCE.
 - j. UFCE shall be responsible for the periodic review of the usage of less-lethal devices, systems and associated equipment, in order to evaluate compliance with policy, as well as to assess their overall safety and effectiveness.
2. Empty-Hand Strikes
- a. Strikes targeting strike **pressure points** may be utilized **as a compliance tool** on a subject offering, at a minimum, active resistance.
 - b. Other strikes (e.g., **punches, kicks**, etc.) may be utilized as a defensive tactic on a subject offering, **at a minimum, assaultive resistance**
3. Oleoresin Capsicum (OC) Spray
- a. OC Spray may be utilized as a compliance tool on **a subject** offering, at a minimum, active resistance.
 - b. Authorized Officers/Agents may only use chemical agents authorized by the Director of UFCE. Officers/agents may not carry personally-owned OC devices for duty use.
 - c. Authorized Officers/Agents shall decontaminate **exposed** subject(s) as soon as practicable.

- d. Authorized Officers/Agents are responsible for advising their supervisors when the devices issued to them are approaching the end of their useable life so that they can be replaced prior to their expiration date.
- e. Authorized Officers/Agents are required to turn in expired, damaged, or empty OC spray canisters to local training staff for proper disposal in accordance with local Environmental Protection Agency (EPA) and Occupational Safety and Health Administration (OSHA) requirements.
- f. The TSA and FAA do not permit any chemical agents in the cabin of a commercial aircraft. As provided by 49 C.F.R. § 175.10, self-defense spray (mace or pepper spray) may be carried in checked baggage, provided the container does not exceed four fluid ounces and has a positive means to prevent accidental discharge. Chemical agents shall be carried aboard CBP aircraft only in accordance with *CBP Air Operations Handbook* (AOH) guidelines.

4. Collapsible Straight Batons (CSB)

- a. A CSB may be utilized as a defensive tool on a subject offering, at a minimum, assaultive resistance.
- b. Authorized Officers/Agents may only use CSBs authorized by the Director of UFCE. Officers/agents may not carry personally-owned batons for duty use.
- c. The following acts and techniques with the CSB are prohibited when using less-lethal force:
 - (1) **Choke holds**, carotid control holds, and other **neck restraints**
 - (2) Use of a baton to apply “come-along” holds to the neck area; and
 - (3) Intentional strikes with the **baton to the head**, the neck, the face, the groin, the solar plexus, the kidneys or the spinal column.

5. Electronic Control Weapons (ECWs)

An ECW is a less-lethal weapon which is designed to use short-duration **electronic pulses to cause Neuro-Muscular Incapacitation (NMI) and/or pain**, with minimal risk of serious physical injury or death.

- a. An ECW may be utilized as a compliance tool on a subject offering, at a minimum, active resistance in a manner that the Authorized Officer/Agent reasonably believes may result in injury to themselves or to another person.

- b. An ECW should be deployed for one **standard cycle** (five seconds) and then evaluate the situation to determine if subsequent cycles are reasonable and necessary. Each ECW cycle must be both reasonable and necessary **to overcome** non-compliance by an actively resistant subject and to accomplish the officer/agent's law enforcement duties.
- c. A subject should not receive more than three ECW cycles. If the use of the ECW is unsuccessful, the Authorized Officer/Agent should transition to another reasonable force option.
- d. CBP personnel should not use an ECW, and should consider other force options, with respect to subjects who are: small children; elderly; pregnant; low body mass index (BMI) persons; near known flammable materials; on elevated surfaces; operating conveyances; adjacent to traffic; in water sufficient to drown; running; or handcuffed.
 - (1) Authorized Officers/Agents should use an ECW on **a subject who is running** only when the officer/agent has reasonable belief that the subject presents an imminent threat of injury to an officer/agent or another person. The threat presented by the subject must outweigh the risk of injury to the subject that might occur as a result of **an uncontrolled fall** while the subject is running.
- e. Authorized Officers/Agents should not intentionally expose a subject to more than one ECW at a time.
- f. Authorized Officers/Agents shall not intentionally target the head, neck, groin or female breast.
- g. When practicable and when other Authorized Officers/Agents are present, officers/agents should verbalize "**TASER, TASER, TASER**" prior to deployment **to warn** fellow officers/agents **of the imminent use** of an ECW. This will alert fellow officers/agents to prepare to control a subject under the power of an ECW.
- h. ECWs shall be carried on the non-gun side in a UFCE-authorized holster issued by CBP or purchased through an official uniform purchase program.
- i. Any subject in CBP custody who has been exposed to an ECW shall, as soon as practicable, be seen by an Emergency Medical Technician or other trained medical professional.
- j. CBP personnel trained and certified in the use of an ECW may remove probes embedded in **a person's skin**, provided **the probes** are not **embedded** in a sensitive area like the head, neck, genitals, or female breast tissue.

Probe removals in **those instances** shall be **performed** by a trained medical professional.

- k. ECW probes are considered a biohazard and shall be disposed of **according to established** biohazard disposal **protocol**.
 - l. Each ECW shall have all stored deployment and utilization data downloaded quarterly. ROs shall ensure that all downloaded ECW data is securely stored and maintained for a minimum of three years.
 - m. After each ECW deployment, data related to that deployment shall be downloaded and saved. A copy of the data report shall be attached to the use of force report in the CBP Use of Force Reporting System (UFRS).
6. Compressed Air Launchers (e.g., PLS and FN303)

Compressed air launchers are less-lethal impact/chemical irritant delivery systems that are powered by compressed air. The launchers can deliver a variety of less-lethal projectiles including **kinetic impact**, **PAVA** **pepper powder** and non-toxic **marking rounds**.

- a. A compressed air launcher may be used for **area saturation against** subject(s) who, at a minimum, demonstrate **active resistance**.
- b. A compressed air launcher may be used as a kinetic impact delivery system on subject(s) who, at a minimum, demonstrate **assaultive** resistance.
- c. Authorized Officers/Agents may also use a PLS to remove subjects who are intentionally covering the engine of a vessel in order to deploy marine **disabling** fire. Such deployment must target the strike pressure points of the outer extremities (i.e., arms and legs).
- d. Authorized Officers/Agents may use **a** compressed air launcher to **mark** a conveyance **for identification** purposes in situations where a conveyance has failed to comply with another officer's/agent's lawful attempt to stop it, in situations where the use of a controlled tire deflation device would not be reasonable, or if an involved vehicle is leaving the scene of an enforcement action without authorization. When deploying a compressed air launcher for marking and identification purposes, officers/agents may not target the conveyance's windows.
- e. Authorized Officers/Agents should not use a compressed air launcher, and should consider other force options, on subjects who are: small children; elderly; pregnant; or operating a conveyance.

- f. Authorized Officers/Agents may use the PLS on subjects between 3 and 60 feet away as a kinetic impact device. Officers/agents may use the PLS on subjects up to 150 feet away as an area saturation device.
 - g. Authorized Officers/Agents may use the FN303 on subjects between 10 to 225 feet away as a kinetic impact device. Officers/agents engaging subjects with the FN303 from 10 to 20 feet should **target the** subject's lower **extremities**. Officers/agents engaging subjects greater than 20 feet may target **the lower torso** or upper and lower extremities (i.e., arms and legs).
 - h. The FN303 shall not be deployed if the officer/agent is less than 10 feet from the subject unless the use of deadly force is reasonable and necessary.
 - i. The intentional targeting of areas where there is a substantial risk of serious physical injury or death is considered a use of deadly force. Authorized Officers/Agents shall not intentionally target the **head, neck, spine**, or groin of the intended subject, unless the use of deadly force is reasonable.
7. Munition Launchers (e.g., 40mm) and Less-Lethal Specialty Impact and Chemical Munitions (LLSI-CM)

Munition Launchers are a less-lethal specialty impact/chemical munition (LLSI-CM) delivery system that are designed to deliver an impact projectile, **a chemical irritant** projectile or a combination projectile with more accuracy, higher velocity, and longer range than a **projectile deployed** by hand.

LLSI-CM can also be delivered by means of a device that is designed to be hand thrown by an Authorized Officer/Agent.

- a. Subject to the exceptions described in subsection c below, a Less-Lethal Chemical Munition (LLCM) may be utilized as a compliance tool on **a subject** offering, at a minimum, active resistance.
- b. Subject to the exceptions described in subsection c below, a Less-Lethal Specialty Impact (LLSI) munition may be utilized as a compliance tool on a subject offering, at a minimum, assaultive **resistance**.
- c. Authorized Officers/Agents should not use a LLSI-CM and should consider other force options with respect to subjects who are: small children; elderly; pregnant; near known flammable materials (when using a pyrotechnic device); or operating conveyances.
- d. When practicable and when other officers are present, Authorized Officers/Agents should verbalize "Less-Lethal, Less-Lethal, Less-Lethal" prior to deployment to warn fellow officers/agents of **the imminent use** of a LLSI-CM. This will alert fellow officers/agents to prepare for the deployment of a LLSI-CM.

- e. Authorized Officers/Agents shall not intentionally target the head, neck, groin or female breast.
 - f. Any subject **in CBP custody** who has been exposed to a LLSI-CM shall, as soon as practicable, be seen by an Emergency Medical Technician or other trained medical professional.
 - g. The Federal Aviation Administration (FAA) prohibits the transportation of LLSI-CM's and LLSI-CM combinations (e.g., CS (O-Chlorobenzylidene-malononitrile) Stingball) **onboard** commercial aircraft. All CBP employees will comply with this regulation. Transportation of LLSI-CM munitions will be accomplished by the use of a CBP vehicle/vessel and/or an authorized commercial **ground** carrier.
 - h. The transportation of LLSI-CM onboard CBP vessels **must conform with** the appropriate safety standards such as storage and transportation of the devices in insulated, water proof containers to prevent damage or unintended discharge.
 - i. Once the safety pin has been pulled on a hand-held LLSI-CM the deployment of the hand-held LLSI-CM should be immediate. The safety pin should never be reinserted in the hand-held LLSI-CM once it has been pulled.
 - j. Approval from the Director of UFCE **is required** prior to each individual purchase of LLSI-CM.
8. Controlled Tire Deflation Devices (CTDDs)

CTDDs are specialized devices whose deployment results in the controlled deflation of a vehicle tire.

- a. A CTDD may only be deployed with supervisory authorization and when **the** immediate or **potential** danger to the public created by the deployment of the CTDD is less than **the** immediate or potential **danger** to the public should the suspect vehicle be allowed to proceed without deployment of **the** CTDD.
 - (1) The CTDD shall be deployed in a manner that minimizes **risk of** injury to **persons** or damage to property.
- b. A CTDD may be deployed:
 - (1) When an Authorized Officer/Agent directs a motor vehicle to stop and the vehicle fails to comply with the officer's/agent's order;
 - (2) When a vehicle flees from the primary or secondary inspection area of a checkpoint or port of entry (POE);

About the Author:

Francesco Levato is a poet, a literary translator, and a new media artist. Recent books include *Endless, Beautiful, Exact*; *Elegy for Dead Languages*; *War Rug*, a book length documentary poem; *Creasuring* (as translator); and the chapbook *jettison/collapse*. He has collaborated and performed with various composers, including Philip Glass, and his cinépoetry has been exhibited in galleries and featured at film festivals in Berlin, Chicago, New York, and elsewhere. He founded the Chicago School of Poetics, holds an MFA in Poetry, and is a PhD candidate in English Studies.

Locofo Chaps

Eileen Tabios' *To Be An Empire Is To Burn!*

Charles Perrone's *A CAPacious Act*

Joel Chace's *America's Tin*

More information on Locofo Chaps can be found at www.moriapoetry.com.

Locofo Chaps

