

**Management Alert - FPS
Did Not Properly Designate
DHS Employees Deployed
to Protect Federal
Properties under 40 U.S.C.
§ 1315(b)(1)**





OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

November 2, 2020

MEMORANDUM FOR: Chad F. Wolf
Acting Secretary
Department of Homeland Security

FROM: Joseph V. Cuffari, Ph.D.
Inspector General

JOSEPH V
CUFFARI

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SUBJECT: *Management Alert – FPS Did Not Properly Designate
DHS Employees Deployed to Protect Federal Properties
under 40 U.S.C. § 1315(b)(1)*

For your action is our final management alert, *Management Alert — FPS Did Not Properly Designate DHS Employees Deployed to Protect Federal Properties under 40 U.S.C. § 1315(b)(1)*, notifying you of an urgent issue that requires the Department of Homeland Security take immediate action to: (1) ensure the Director of the Federal Protective Service (FPS) has authority to designate DHS employees under 40 United States Code (U.S.C.) § 1315(b)(1); and (2) ensure proper, by-name designation of any DHS employees authorized to exercise authority under 40 U.S.C. § 1315 to protect Federal property and persons on that property.

Issuance of this management alert is consistent with our duties under Section 2(2) of the *Inspector General Act of 1978, as amended*, to promote the economy, efficiency, and effectiveness of DHS programs and operations.

As appropriate, we have incorporated the technical comments provided by FPS on the draft management alert. We have also appended the Office of the General Counsel's (OGC) response verbatim to the final alert. OGC did not concur with either of the alert's recommendations. Based on information provided in OGC's response, we consider both recommendations open and unresolved. The Department of Homeland Security Directive 077-01, *Follow-Up and Resolution for Office of Inspector General Report Recommendations*, allows 90 days for a written response. However, given the urgency of this matter, please ensure our office receives the following as soon as possible: (1) a written response that includes your and the Under Secretary for Management's agreement or disagreement, as to the first and second recommendations, respectively; (2) corrective action plans; and (3) target completion dates for each recommendation. Until your response is received and evaluated, we consider



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the recommendations open and unresolved. Please send your request or closure request to OIGAuditsFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act of 1978, as amended*, we will provide copies of our alert to congressional committees with oversight and appropriation responsibility over DHS. We will also post the final alert on our website for public dissemination.

Please call me with any questions, or your staff may contact Sondra McCauley, Assistant Inspector General for Audits, at (202) 981-6000.

cc: Under Secretary for Management
Director of the Federal Protective Service



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Summary of Issues

Under 40 United States Code (U.S.C.) § 1315, the Secretary of the Department of Homeland Security is required to protect Federal property and people on that property.¹ To assist him with this task, the Secretary can “designate employees of [DHS] ... as officers and agents for duty in connection with the protection of property owned or occupied by the Federal Government and persons on the property, including duty in areas outside the property to the extent necessary to protect the property and persons on the property.”² We are issuing this management alert because the Director of the Federal Protective Service (FPS) did not properly designate DHS employees recently deployed to protect Federal properties under 40 U.S.C. § 1315(b)(1).

Background

FPS Director’s Attempt to Designate DHS Employees

The Director of FPS issued memoranda in June and July 2020 that sought to designate personnel from U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), the Transportation Security Administration (TSA), and U.S. Secret Service (Secret Service), pursuant to 40 U.S.C. § 1315(b)(1). An example of one such memorandum is attached as Appendix C. The stated aim of these memoranda was to designate personnel to support FPS’ protection of Federal property and persons on the property.

Validity of FPS Director’s Delegated Authority

On October 25, 2019, Kevin K. McAleenan, using the title “Acting Secretary,” purported to delegate authority to designate DHS employees under 40 U.S.C. § 1315(b)(1) to the Under Secretary for Management.³ On December 18, 2019, the Senior Official Performing the Duties of the Under Secretary for Management purported to further delegate this designation authority solely to the FPS Director.⁴ The FPS Director sought to rely on this delegation of authority to designate employees under 40 U.S.C. § 1315(b)(1).

¹ See 40 U.S.C. § 1315(a).

² *Id.* § 1315(b)(1).

³ DHS Delegation 00002, rev. 00.3, *Delegation to the Under Secretary for Management* ¶ II.A.36.b (Oct. 25, 2019). On September 8, 2020, Chad F. Wolf revised aspects of this delegation, but none related to 40 U.S.C. § 1315.

⁴ DHS Delegation 02500, *Delegation to the Director, Federal Protective Service* ¶¶ II.D, III (Dec. 18, 2019).



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We are aware that the Government Accountability Office (GAO),⁵ some policymakers, and certain private groups contend that Mr. McAleenan did not lawfully serve as Acting Secretary. This contention, if correct, appears to support the conclusion that the previously described October 25, 2019 delegation from Mr. McAleenan to the Under Secretary for Management was invalid. It must be noted, however, that in an August 7, 2020 opinion issued by the U.S. District Court for the Northern District of California in *La Clinica de la Raza v. Trump*, the court concluded that Mr. McAleenan had properly served as Acting Secretary.⁶ On the other hand, in a September 11, 2020 opinion issued by the U.S. District Court for the District of Maryland in *Casa de Maryland, Inc. v. Wolf*, the court concluded that Mr. McAleenan likely was not lawfully the Acting Secretary when he took the actions challenged by the plaintiffs in that case.⁷ On September 29, 2020, in *Immigrant Legal Resource Center v. Wolf*, another district court reached a similar conclusion.⁸

Given this litigation and other matters pending in Federal court,⁹ and consistent with the prior position we enunciated on issues involving the Federal Vacancies Reform Act and the Homeland Security Act in response to GAO's August 14, 2020 decision,¹⁰ we are not in a position to opine on the validity of the authority that was purportedly delegated through Delegations 00002 (Revision 00.3) and 02500. We do note that Mr. Wolf signed two documents framed as ratifications in an effort to validate certain actions that he and Mr. McAleenan took in their putative service as Acting Secretary.¹¹ Those documents did not address the validity of Delegations 00002 (Revision 00.3) and 02500. Because of the FPS Director's reliance on Delegations 00002 (Revision 00.3) and 02500 to attempt to designate personnel under 40 U.S.C. § 1315(b)(1), the Department should ensure that these delegations are valid, if

⁵ Matter of: Department of Homeland Security, No. B-331650 (Government Accountability Office Aug. 14, 2020).

⁶ *La Clinica de la Raza v. Trump*, No. 19-cv-04980-PJH, 2020 WL 4569462, at *12-14 (N.D. Cal. Aug. 7, 2020).

⁷ *Casa de Maryland, Inc. v. Wolf*, No. 20-cv-02118-PX, 2020 WL 5500165, at *20-23 (D. Md. Sept. 11, 2020).

⁸ *Immigrant Legal Resource Center v. Wolf*, No. 20-cv-05883-JSW, 2020 WL 5798269, at *7-9 (N.D. Cal. Sept. 29, 2020).

⁹ See, e.g., Complaint, *Don't Shoot Portland v. Wolf*, No. 20-cv-02040 ¶¶ 139-151 (D.D.C. July 27, 2020), ECF No. 1; Complaint, *Pettibone v. Trump*, No. 20-cv-01464-YY ¶¶ 55-62 (D. Ore. Aug. 26, 2020), ECF No. 1; Fourth Amended Complaint, *Battalla Vidal v. Wolf*, No. 16-cv-04756-NGG-JO ¶¶ 113-157 (E.D.N.Y. Aug. 28, 2020), ECF No. 308; Complaint, *Santa Fe Dreamers Project v. Wolf*, No. 20-cv-02465 ¶¶ 70-91 (D.D.C. Sept. 3, 2020), ECF No. 1.

¹⁰ See Memorandum from Joseph V. Cuffari to Hon. Bennie G. Thompson, Chair, Committee on Homeland Security, U.S. House of Representatives & Hon. Carolyn B. Maloney, Chair, Committee on Oversight & Reform, U.S. House of Representatives, GAO Decision No. B-331650 (Aug. 14, 2020) 3 (Sept. 14, 2020).

¹¹ Ratification of Department Actions, 85 Fed. Reg. 59,651-01 (Sept. 23, 2020); Ratification of Department Actions, 85 Fed. Reg. 65,653-01 (Oct. 16, 2020).



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the FPS Director seeks to rely on them going forward.

FPS Director Did Not Properly Identify DHS Employees by Name Who Could Exercise Authority under 40 U.S.C. § 1315

The larger problem with the FPS Director's approach to designation is that he did not identify any DHS employees by name who could exercise authority under 40 U.S.C. § 1315. Under subsection 1315(b)(1), the Secretary or his designee can designate employees as officers and agents to protect Federal property and persons on that property. The Homeland Security Act, the source of this provision, does not define the term "designate."¹² When a statute does not define a term, courts apply an "ordinary meaning" to it.¹³ Under this interpretive approach, the term "designate" means, "to indicate and set apart for a specific purpose, office, or duty."¹⁴ As previously described, Mr. McAleenan sought to delegate this designation authority to the Under Secretary for Management, and the Senior Official Performing the Duties of the Under Secretary for Management then sought to delegate this authority to the FPS Director. This latter delegation, by its own terms, provided that the FPS Director cannot further delegate the authority to designate employees as officers and agents to protect Federal property and persons on that property.¹⁵

Under 40 U.S.C. § 1315(b)(1) and the delegation purporting to confer this designation authority solely on the FPS Director, the best reading of the designation requirement is that the FPS Director will identify particular officers and agents who will exercise law enforcement authority under 40 U.S.C. § 1315. This construction is supported by FPS' own training on designation, which states that "1315 designation [is] applicable only to those DHS officers nominated by name on [a] master list."¹⁶ The FPS Director also sought to take this name-specific approach in attempting to designate employees at other components to act under this statute. The FPS Director signed component-specific memoranda that are written as if they are issued to particular officers and agents. Five times in that memorandum, the FPS Director uses the pronoun "you:" (1) he states that "I designate you as a law enforcement officer for duty in connection with your support of the Federal Protective Service (FPS) in the protection of federal property and persons on the impacted federal property that are under FPS' protection responsibility;" (2) he notes that "[t]his designation is limited to law enforcement functions on the federal property

¹² See Homeland Security Act of 2002, Pub. L. No. 107-296, § 1706, 116 Stat. 2135, 2316-17.

¹³ *Taniguchi v. Kan Pacific Saipan Ltd.*, 566 U.S. 560, 566 (2012).

¹⁴ *Designate*, Merriam-Webster's Collegiate Dictionary (10th ed. 1998).

¹⁵ DHS Delegation 02500, *Delegation to the Director, Federal Protective Service* ¶ III (Dec. 18, 2019) ("The authority under paragraph II.D to designate employees of other DHS Components, with the consent of the Component Head, may not be re-delegated.").

¹⁶ FPS Authority and Jurisdiction Orientation, Slide 3 (undated).



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assigned to you by FPS;” (3) he identifies the authority that “you have;” (4) he identifies activities that “[y]ou are authorized to conduct;” and (5) he explains that, “[p]rior to utilizing this authority, you are required to receive legal briefings provided by FPS legal advisors on 40 U.S.C. § 1315 authorities and jurisdiction....”

At the end of the memoranda, the FPS Director references an attached distribution list, suggesting that the personnel on that list are the ones whom he designated. But there was no attached distribution list, and the FPS Director did not send the memoranda to particular officers and agents when he issued them. FPS acknowledged that the memoranda erroneously referenced rosters of employees to be designated, and provided the following explanation to OIG for that error:

You are correct in that a final roster was not available nor was it sent at the time the memo was issued. In prior instances of cross designation such as at the border wall construction, sufficient time was available to complete the training and to provide the defined list of personnel for full visibility to all. While that was the intent with this cross-designation as the memo was drafted, the operational tempo and broad requirements meant that a change was necessary. Instead, the rosters were developed via a robust training delivery requirement that confirmed that individuals attended the training and confirmed attendance at the conclusion of the training so that a clear roster of personnel trained in cross designation was available. The cross-designation memorandums for each component head was provided in advance of any utilization of DHS Officers and Agents to support FPS protection efforts and prior to the required training being conducted and the cc: indicating that the full roster was attached should have been struck.¹⁷

Given the FPS Director’s approach, it is impossible to identify which particular employees he designated, or, stated differently, indicated, set apart, or chose, to exercise authority under 40 U.S.C. § 1315. As a result, his memoranda did not designate anyone under this statute.

This conclusion is supported by the FPS Director’s memoranda themselves, an example of which is reproduced in Appendix C. In those memoranda, the FPS Director described in explicit terms several specific law enforcement activities that a designated officer is authorized to conduct to protect Federal property

¹⁷ E-mail from FPS to Office of Inspector General (OIG) (Sept. 11, 2020, 09:17 EDT).



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and persons on the property.¹⁸ Law enforcement officers from CBP, ICE, TSA, and Secret Service typically *lack* this precise scope of authority.

Another effect of the FPS Director's approach is that several law enforcement personnel were deployed to Portland, Oregon, to augment FPS' protection efforts, but may not have received training on 40 U.S.C. § 1315 before they sought to exercise that statutory authority. In purporting to designate personnel, the FPS Director emphasized the importance of receiving training on section 1315 before exercising law enforcement authority under that statute. Yet we identified several individuals who deployed to Portland but whom FPS could not confirm received training on section 1315. Some of these individuals used force while deployed to Portland. We also identified several individuals who deployed to Portland before they received training on section 1315. As to this issue, FPS stated its Training and Professional Development unit, which administered training on section 1315, does not have visibility or input on who is deployed, or when they are deployed. This confusion illustrates a risk of not identifying, by name, those designated under section 1315.

FPS' Defense of Designation Approach

According to FPS, the FPS Director properly designated officers and agents under 40 U.S.C. § 1315(b)(1) using the approach just described. FPS stated the following to OIG:

There are no statutory or policy requirements as to how the implementation of the cross designation should occur as long as 1) there is authority to cross designate, 2) the component heads concurred with the cross designation of their personnel, and 3) the officers being cross designated meet the basic requirements of the U.S. Attorney General Guidelines and received cross designation training. FPS met these 3 requirements and provided the documentation of the Director's authority to cross designate pursuant to a delegation from [the Management Directorate], the component heads' correspondence concurring with the cross designation of their personnel, and training records showing compliance with the U.S. Attorney General Guidelines and FPS provided training.¹⁹

¹⁸ A memorandum from the FPS Director purporting to designate CBP personnel under subsection 1315(b)(1) authorizes designees to "conduct investigations; require and receive information relating to offenses; serve and execute search and arrest warrants; serve subpoenas and summons; administer oaths; make arrests without warrant; take actions to preserve the peace while protecting federal government facilities and personnel; [and] bear firearms[.]" among other things.

¹⁹ E-mail from FPS to Office of Inspector General (OIG) (Sept. 11, 2020, 09:17 EDT).



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FPS is correct that 40 U.S.C. § 1315 does not prescribe how the Secretary, or the Secretary's designee, must designate anyone under subsection 1315(b)(1), and we do not question DHS' authority to exercise this statutory authority. In this management alert, however, we identify concerns about how DHS sought to exercise this designation authority in connection with its efforts to protect Federal property and persons on that property.

FPS' position ignores the requirement that the Secretary, or his designee, must designate officers and agents to exercise law enforcement authority under 40 U.S.C. § 1315. The FPS Director's repeated use of the pronoun "you" shows that he sought to designate particular employees, but, as noted previously, he did not do so. As a result, it is not possible to identify anyone he designated (e.g., indicated, set apart, or chose) to exercise authority under this statute.

FPS attempts to defend the FPS Director's approach by stating that it required DHS employees to take training on 40 U.S.C. § 1315, in order to exercise law enforcement authority under that statute. For at least three reasons,²⁰ this argument is not persuasive. First, the FPS Director's memoranda unequivocally state, "I designate you." FPS did not require employees to take training on 40 U.S.C. § 1315 before he issued these memoranda. Attending a training *after* being designated is not a designation pre-requisite, and does not permit anyone to discern who, exactly, the FPS Director sought to designate when he issued these memoranda.

Second, even if we assume the FPS Director had the requisite delegated authority to designate personnel under 40 U.S.C. § 1315(b)(1), he cannot further delegate that authority. The Department is correct to the extent it argues that section 1315 does not place limits on delegation and redelegation of the authority to designate officers and agents to protect Federal property and persons on that property; nevertheless, the delegation from the Senior Official Performing the Duties of the Under Secretary for Management to the FPS Director expressly prohibits redelegation of the section 1315 designation authority. Given this restriction, which the Department chose to impose on itself and is not required by statute, the at-issue delegation does not permit the FPS Director to issue designation memoranda to no one in particular, and then allow someone else to decide who is actually designated under subsection 1315(b)(1).

Third, as discussed above, FPS' training records do not show that all of the DHS employees it purported to designate under subsection 1315(b)(1) actually

²⁰ Fieldwork in this review is ongoing, and as a result OIG may receive additional information that informs our analysis of this issue.



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participated in its training on 40 U.S.C. § 1315.

Recommendations

Recommendation 1: We recommend the Acting Secretary of Homeland Security ensure the Under Secretary for Management, the Director of the Federal Protective Service, and anyone else seeking to designate DHS employees under 40 U.S.C. § 1315(b)(1) have received properly delegated authority to do so.

Recommendation 2: We recommend the Director of the Federal Protective Service or his designee, exercising properly delegated authority to designate DHS employees under 40 U.S.C. § 1315(b)(1), designate by name any DHS employees authorized to exercise authority under that statute to protect Federal property and persons on that property.



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Department's Response and OIG Analysis

We provided DHS with a draft of our management alert on October 2, 2020. We received technical comments from FPS on October 15, and incorporated them into our final alert, as appropriate. On October 19, the Office of the General Counsel (OGC) provided written comments on the draft alert, which we include as Appendix B. On October 20, we received an appendix to OGC's written comments, which we also include in Appendix B. OGC did not concur with either recommendation, so we consider both open and unresolved.

OGC Comments to Recommendation 1: Non-concur. OGC suggests that OIG is taking a position on the validity of Mr. McAleenan's status as Acting Secretary, which is an "about-face" from the position it enunciated in a September 14, 2020 memorandum to several Congressional stakeholders. Further, according to OGC, it has consistently maintained its legal position in relevant legal proceedings that Mr. McAleenan validly served as Acting Secretary. Until a Federal court definitively determines that question, it is premature to take additional steps to ensure that the FPS Director has designation authority under 40 U.S.C. § 1315.

OIG Analysis of OGC Comments: This alert does not deviate from the approach we took in September 2020 as to the validity of Mr. McAleenan's status as Acting Secretary. In both instances, we declined to weigh in on whether Mr. McAleenan properly served in that role. Here, we identified our concern in response to recent litigation developments, and as part of our ongoing review to assess the preparation, activities, and authority of DHS law enforcement officers deployed to protect Federal property.

We alerted the Department of this concern so that it could ensure the delegations on which it relies to designate personnel under 40 U.S.C. § 1315(b)(1) are valid. Despite OGC's legal position that Mr. McAleenan validly served as Acting Secretary, Mr. Wolf has sought to ratify prior actions taken by Mr. McAleenan. OIG's recommendation encourages the Acting Secretary to take similar, proactive steps to ensure those seeking to designate personnel under 40 U.S.C. § 1315(b)(1) have proper authority to do so.

This recommendation will remain open and unresolved until we receive documentation confirming that the Under Secretary for Management, the Director of the Federal Protective Service, and anyone else seeking to designate DHS employees under 40 U.S.C. § 1315(b)(1) has received properly delegated authority to do so. Such documentation could take the form of a new set of delegations, or a binding judicial ruling that Mr. McAleenan was validly serving as Acting Secretary on October 25, 2019.



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OGC Comments to Recommendation 2: Non-concur. According to OGC, the FPS Director properly designated officers under 40 U.S.C. § 1315(b)(1), which makes this recommendation unnecessary. In reaching a contrary conclusion, OIG improperly construed 40 U.S.C. § 1315(b)(1) as requiring by-name designation of officers, and did not acknowledge that FPS maintains a list of employees who completed FPS’ five-step cross-designation process.

OIG Analysis of OGC Comments: While we will address OGC’s comments to the draft alert in the following paragraphs, we first note that FPS has taken steps to partially implement this recommendation, even though OGC did not concur with it. During our ongoing fieldwork, FPS informed us that, in response to this management alert, it refined its process for training Department personnel on 40 U.S.C. § 1315. FPS stated that, in October 2020, it began to issue letters to those participating in this training, signed by the FPS Director. FPS provided an example of such a letter, which designates personnel under 40 U.S.C. § 1315(b)(1). It has not issued similar letters to those who already participated in this training.

In its alert, OIG concludes that the FPS Director did not properly designate DHS employees recently deployed to protect Federal properties under 40 U.S.C. § 1315(b)(1). To support this conclusion, we considered the text of this subsection, the inability of the FPS Director to further delegate designation authority, FPS’ training materials on 40 U.S.C. § 1315, and the language the FPS Director used in issuing memoranda that sought to designate personnel.

DHS Delegation 02500, *Delegation to the Director, Federal Protective Service* is of particular note. This delegation purports to delegate authority to designate personnel under 40 U.S.C. § 1315 from the Senior Official Performing the Duties of the Under Secretary for Management to the FPS Director. It states, “The authority under paragraph II.D to designate employees of other DHS Components, with the consent of the Component head, may not be re-delegated.” This document—not OIG’s conclusion—limits who may designate personnel to exercise authority under 40 U.S.C. § 1315. Requiring by-name designation of employees comports with the plain language of 40 U.S.C. § 1315(b)(1) and the at-issue delegation.

OGC describes a cross-designation approach under which Department employees other than the FPS Director sought to designate personnel under 40 U.S.C. § 1315(b)(1), even though they lack delegated authority to do so. According to OGC, the FPS Director signs and issues a letter or memorandum of official § 1315 cross-designation. Then, FPS provides pertinent training to § 1315-designated personnel, and prepares a by-name list of personnel who complete the training. As we note in our alert, when the FPS Director issued the memoranda we describe, he did not send them to particular officers and



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agents. That means that, after the fact, someone else tried to designate employees under 40 U.S.C. § 1315(b)(1).

According to OGC, FPS provided training on 40 U.S.C. § 1315 to more than 5,700 officers. According to FPS, those who took this training in October 2020 received designation letters signed by the FPS Director. But for those who took this training before October 2020, someone other than the FPS Director placed them on a list of officers who could, according to the Department, exercise authority under 40 U.S.C. § 1315(b)(1). We identified no delegated authority permitting this approach to designation.

OGC also asserts that FPS followed a process of designation, and that only after completing this process could someone from another component exercise authority under 40 U.S.C. § 1315(b)(1). We agree the Department can utilize a process of designation, and that the Department has flexibility in designing it, provided that the FPS Director is the official designating specific personnel. But the process OGC describes is not the one the FPS Director adopted, as illustrated by his memoranda purporting to designate personnel at other components. He did not describe a process that conditioned designation on attending training or satisfying any other requirement, but instead stated unequivocally, “I designate you as a law enforcement officer for duty in connection with your support of the Federal Protective Service (FPS) in the protection of federal property and persons on the impacted federal property that are under FPS’ protection responsibility.”

The FPS Director’s approach rightly recognized that designation occurs at a specific point in time. But he did not designate anyone when he issued his memoranda, because he did not distribute them to particular officers and agents. While OGC states that the FPS Director maintains awareness of and monitors those who complete training on 40 U.S.C. § 1315, that is different from designating those personnel to exercise authority under that statute. Because the FPS Director did not designate those personnel, they lack the precise scope of authority provided by 40 U.S.C. § 1315.

OGC also asserts that the alert is factually incorrect. We disagree. OGC largely bases this view on its legal disagreement with the alert’s conclusions. As we explain, the alert’s conclusions and recommendations are sound. OGC also emphasizes FPS’ cross-designation training, stating that FPS “worked diligently to ensure that the training requirement is met.” In our fieldwork to date, we identified several personnel who sought to exercise authority under 40 U.S.C. § 1315 but who did not take the required training before doing so. This is a result of FPS’ approach to designation, which relied on someone other than the FPS Director to decide which Department personnel should augment FPS’ protection efforts.



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This recommendation will remain open and unresolved until we receive documentation that the FPS Director or his designee, exercising properly delegated authority to designate DHS employees under 40 U.S.C. § 1315(b)(1), designated by name any DHS employees authorized to exercise authority under that statute to protect Federal property and persons on that property.



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Appendix A

Objective, Scope, and Methodology

The Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002*, Pub. L. No. 107-296, 116 Stat. 2135, which amended the *Inspector General Act of 1978*. We issued this management alert during an ongoing review of *DHS Law Enforcement Efforts to Protect Federal Facilities*.

The objective of our ongoing review is to assess the preparation, activities, and authority of DHS law enforcement officers deployed to protect Federal property.

We reviewed 40 U.S.C. § 1315; delegations of authority; litigation and administrative actions regarding the status of Kevin K. McAleenan and Chad F. Wolf as Acting Secretary of the Department of Homeland Security; caselaw; and FPS documents, including memoranda from the FPS Director, training materials, and e-mail correspondence describing how FPS sought to designate DHS employees under 40 U.S.C. § 1315(b)(1).

We are issuing this alert under the authority conferred by the *Inspector General Act of 1978, as amended*, Section 2(2), “to promote economy, efficiency, and effectiveness in the administration of, and [] to prevent and detect fraud and abuse in, [DHS] programs and operations.” We conducted work on this alert in connection with an ongoing review being performed pursuant to the *Inspector General Act of 1978, as amended*, and according to the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency. We may include additional information or recommendations regarding the designation issue addressed in this alert in an additional report resulting from our ongoing review of *DHS Law Enforcement Efforts to Protect Federal Facilities*.



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Appendix B
Comments to the Draft Management Alert

U.S. Department of Homeland Security
Washington, D.C. 20528



October 19, 2020

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D
Inspector General

FROM: Chad R. Mizelle 
Senior Official Performing the Duties of the General Counsel

SUBJECT: Response to Draft Management Alert OIG-21-XX: "FPS Did Not Properly Designate DHS Employees Deployed to Protect Federal Properties under 40 U.S.C. § 1315(b)(1)."

Thank you for the opportunity to comment on the Draft Management Alert, "FPS Did Not Properly Designate DHS Employees Deployed to Protect Federal Properties under 40 U.S.C. § 1315(b)(1)," OIG-21-XX, dated October 2, 2020. OIG states that the Management Alert is issued because "the Director of the Federal Protective Service (FPS) did not properly designate DHS employees under 40 U.S.C. § 1315(b)(1), in connection with DHS' recent deployment of personnel to protect Federal properties." The OIG issued two recommendations. The Department non-concurs with both.

RESPONSE

This memorandum responds to the conclusions and recommendations in the Management Alert. The Management Alert calls into question the validity of former Acting Secretary Kevin McAleenan's delegation of authority to the Under Secretary for Management (USM), and subsequently to the FPS Director, to cross-designate DHS law enforcement officers under 40 U.S.C. § 1315. The Management Alert recommends that the Department ensure that the FPS Director has received properly delegated authority to designate officers under 40 U.S.C. § 1315.

Additionally, the Management Alert asserts that the FPS Director "did not properly designate the DHS employees under 40 U.S.C. § 1315(b)(1), in connection with DHS' recent deployment of personnel to protect [f]ederal properties." The Management Alert recommends that the FPS Director exercise his cross-designation authority by designating by name any DHS employees deployed to protect federal property and persons on that property.

The Department non-concurs with both of the recommendations.



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BACKGROUND

From May through June 2020, FPS and the Department experienced an unparalleled increase in threats at federal facilities across the nation. From May 29, 2020 through June 30, 2020, FPS responded to 328 demonstrations at federal facilities (a 507% increase compared to 2019) and 214 incidents of destruction and vandalism to federal facilities (a 128% increase compared to 2019), including arson and attempted arson, numerous broken windows and doors, and broken or torn down perimeter camera systems. FPS and the Department also suffered numerous assaults on federal law enforcement officers, including a tragic fatality, when FPS Protective Security Officer Patrick Underwood was shot and killed while protecting a U.S. courthouse in Oakland, California during a protest.

Due to the overwhelming pace of violent demonstrations, civil unrest activities, and the resulting destruction at federal facilities, FPS requested support from U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), Transportation Security Administration (TSA), and U.S. Secret Service (USSS) in June and July 2020. By memorandum dated June 30, 2020, the Acting Secretary directed that the Department's operational components coordinate with the Office of Operations Coordination and FPS to support the protection of federal property and personnel under the Secretary's protection responsibility. Beginning on or about July 4, 2020, FPS received support from DHS law enforcement officers deployed in multiple cities with teams of cross-designated officers supporting the protection of federal property and occupants. The operational pace of mission requirements demanded that FPS deliver cross-designation training to over 5,700 DHS officers in 37 different training sessions to date.

To implement the cross-designation of these DHS law enforcement officers, the FPS Director follows a standard five-step process.

1. The FPS Director requests DHS component support of the FPS mission to protect federal property and persons thereon, as well as consent from component leadership for their personnel to receive fixed-term § 1315 law enforcement cross-designation.
2. The relevant DHS Component Head communicates both concurrence in supporting FPS and consent to the § 1315 cross-designation.
3. FPS and DHS components identify component personnel who both meet the law enforcement training requirements under the implementing guidelines for 40 U.S.C. § 1315, and are operationally available to support FPS.
4. The FPS Director signs and issues a letter or memorandum of official § 1315 cross-designation.
5. FPS provides § 1315-designated DHS component personnel with legal orientation training specific to § 1315, and records a by-name list of component personnel who complete the training.



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Regarding step four of this process for the June and July 2020 deployments, the FPS Director executed designation memoranda for each of the operational components that were providing law enforcement officers in support of the FPS mission.¹ Each memorandum established a time period for the designation, a description of the police powers the officers were authorized to use, and a requirement that no officer could utilize the designated authority until completing the training required in step five. These memoranda were addressed to “Distribution” for each of the operational components providing support.

The purpose of these memoranda was to provide a single designation letter applicable to each of the operational components, to establish the time period for the authorization, and to establish a training requirement that each officer must complete before that officer could exercise authorities under § 1315. FPS listed the component personnel covered by the § 1315 officer designation individually by name, component affiliation, and training completion date in separate component spreadsheets, and FPS provided each supporting component the relevant spreadsheet as the follow-on attachment to each component’s designation memorandum. FPS also consolidated the spreadsheets into a single dynamic roster of all designated component personnel. Because the designation was intended to cover any personnel supporting FPS during the established time period, *e.g.*, between July 31, 2020 and December 31, 2020, the attachment was a dynamic list of personnel that was continually added to and updated as operational requirements and deployments demanded. In short, a component law enforcement officer who completed the required training was added to the list of cross-designated officers and conferred the authority provided in the memoranda issued by the FPS Director and was thus authorized to support FPS during the designated time period. Maintaining a dynamic list for the designated time period—as opposed to a static list only applicable on the date the memoranda were signed—allowed the FPS Director and DHS Component Heads to achieve operational flexibility to deploy officers to new facilities, rotate in officers, and provide one-stop accountability for all law enforcement officers cross-designated under § 1315.

¹ The memoranda were for “Distribution” and provided to CBP, ICE, TSA, and USSS.



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DISCUSSION

I. Delegations of Law Enforcement Authority Under 40 U.S.C. § 1315

OIG's Management Alert calls into question the validity of the FPS Director's delegated authority, based on arguments by the Government Accountability Office (GAO) that former Acting Secretary McAleenan was not lawfully serving as Acting Secretary, and thus, any delegations of authority he signed as Acting Secretary would be invalid. This represents a surprising about-face by OIG. Approximately 30 days ago, OIG concluded that it would be "pointless" to weigh in on whether Mr. McAleenan was properly serving as the Acting Secretary, as federal courts are currently considering the issue.² As OIG had then acknowledged, a federal court will eventually issue a binding determination on the question of the validity of Mr. McAleenan's appointment. Once that happens, the Department's position will either be vindicated or the Department will be required to take steps to ratify Acting Secretary McAleenan's actions. But either way, OIG recognized that a court "would give no weight to the opinion of DHS OIG" and there "is no reason to believe that all stakeholders, including DHS, Congress, [and] GAO . . . would accept a determination by DHS OIG on the matter[]." ³

In light of this posture, the Department respectfully non-concurs with OIG's recommendation that DHS take additional steps to ensure that the USM and the Director of FPS have received properly delegated authority to designate DHS employees under 40 U.S.C. § 1315(b)(1). OGC has consistently maintained its legal position regarding the validity of the appointment of former Acting Secretary McAleenan in all relevant legal proceedings. As the Management Alert implicitly acknowledges, if OGC's position is correct, then the FPS Director's authority to designate DHS employees is legally sound. It is only if OGC's position is incorrect that the Department will need to take additional steps to ensure that the FPS Director has the authority to designate officials under 40 U.S.C. § 1315. Since the Department has yet to receive a definitive determination on that question by a federal court, OGC's legal position as articulated in court filings and publicly available legal memoranda remains the authoritative legal position of the Department, and no further actions are required.⁴

II. Designation of Law Enforcement Officers Under 40 U.S.C. § 1315(b)(1)

OIG's Management Alert concludes that the FPS Director "did not properly designate DHS employees under 40 U.S.C. § 1315(b)(1)" and did not "identify any DHS employees by name who could exercise authority under 40 U.S.C. § 1315."⁵ That conclusion appears to be based on a flawed legal interpretation of § 1315(b)(1) and does not properly account for the searchable, dynamic list of individual DHS law enforcement personnel that FPS provided to OIG. As a result, the Department disagrees with OIG's interpretation of 40 U.S.C. § 1315(b)(1) and non-concurs with the corresponding legal conclusions regarding specific DHS officer designations pursuant to the FPS Director's delegated authority.

² Letter from Inspector General Cuffari to Chairman Thompson and Chairwoman Maloney, September 14, 2020, Re: GAO Decision No. B-331650 (Aug. 14, 2020).

³ *Id.*



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A. FPS Director Properly Designated Officers Under Section 1315

Statutory interpretation is a holistic endeavor that requires consideration of a statutory scheme in its entirety.⁶ “[A] statute is to be construed in a way which gives meaning and effect to all of its parts.”⁷ The Supreme Court stresses that “[i]n expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.”⁸ Given this framework, the officer designation authority described at § 1315(b)(1) must also be viewed in context with the entire statute.

Section 1315 provides broad discretion in the Secretary to designate employees to help protect federal property. Nothing in § 1315 requires the Secretary or his designee to identify particular officers by name in order to designate them to protect federal property. The statute does not establish a procedure the Secretary must use to designate officers, nor does it define “designate.” Indeed, in delegating this authority to the Secretary, the only mandate from Congress is that “the powers granted to officers and agents designated under [§ 1315] shall be exercised in accordance with guidelines approved by the Secretary and the Attorney General.”⁹ Applying an ordinary meaning to the term “designate” would allow the Secretary or his designee to designate a broad class of individuals (as opposed to individual officers and agents)¹⁰ or to designate all individuals who meet certain conditions. The test is not whether the individual officer or agent has specifically been *identified*, but rather whether the officer or agent is *identifiable* based on the designation criteria established by the Secretary or his designee. The reasonable cross-designation process established by the FPS Director easily meets this test.

Under the process established by the FPS Director, only those officers and agents that: (1) receive consent from their component head; (2) possess the requisite background training; and (3) “receive legal briefings provided by FPS legal advisors” are authorized to protect federal

⁴ Pursuant to the Homeland Security Act (HSA) and relevant DHS directives and delegations, OGC has the ultimate authority and responsibility within DHS for providing legal advice and determining the agency’s legal position. Section 103 of the HSA defines the DHS General Counsel as the “chief legal officer of the Department.” Pub. L. No. 107-296, 6 U.S.C. § 113(a)(1)(J). DHS Management Directive 0400, dated January 24, 2003, reiterates that “the General Counsel is the chief legal advisor of the Department” and provides that OGC is “responsible for all legal activities within DHS, to ensure full implementation of DHS’ statutory responsibilities and all policies set forth by the Secretary and all officials of DHS.” The directive explains that OGC determines the Department’s legal position “in order to provide effective legal services dealing with claims, protests, litigation, alternative dispute resolution, and representation of DHS in all legal forums.” Similarly, Delegation Number 0400.2, Delegation to the General Counsel, provides that “the General Counsel is the *final legal authority* within the Department and, as such, has the authority to participate in and decide any legal matter within the Department.” (emphasis added).

⁵ OIG Management Alert at 5.

⁶ *U.S. Nat’l Bank of Oregon v. Independent Ins. Agents of Am., Inc.*, 508 U.S. 439, 454-55 (1993).

⁷ *Saunders v. Sec’y of the Dep’t of Health & Human Servs.*, 25 F.3d 1031, 1035 (Fed. Cir. 1994).

⁸ *United States v. Heirs of Boisdore*, 49 U.S. (8 How.) 113, 122 (1849).

⁹ 40 U.S.C. § 1315(f).

¹⁰ See *Webster’s Third New International Dictionary* (2002) (defining designate as “to distinguish as to class”).



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property under § 1315. The officers that complete those steps are easily identifiable. Indeed, FPS keeps a list. Nothing in § 1315 requires anything more.

B. OIG's Interpretation of Section 1315 Is Flawed

OIG concluded that “the Director of [FPS] did not properly designate DHS employees under 40 U.S.C. § 1315(b)(1), in connection with DHS’ recent deployment of personnel to protect [f]ederal properties.”¹¹ OIG’s conclusion appears to be based on a flawed legal conclusion that the FPS Director was required to identify by name each designated officer at the time he issued his memorandum. This is wrong. Nothing in § 1315 precludes the Secretary or his designee from designating a group of individuals (without individually identifying each one) or adopting a set of criteria and using a dynamic—as opposed to static—list to identify officers designated under § 1315. In fact, a dynamic list is not only legally permissible, it is often what is required in the face of an evolving and dynamic threat. OIG’s legal interpretation inappropriately interprets § 1315 and needlessly handcuffs the Department and our officers and agents while they are fulfilling their statutory mandate to protect federal property. As such, the Department rejects OIG’s recommended course of action.

The plain language of 40 U.S.C. § 1315(b)(1) authorizes the Secretary to “designate employees of the Department . . . as officers and agents . . .” As OIG recognized, § 1315(b)(1) does not define the term “designate.” In the absence of either an express statutory definition, or any modifiers, the word “designate” holds its ordinary meaning.¹² Unfortunately, this is where our agreement with OIG ends.

According to OIG, the ordinary meaning of “designate” is “to indicate and set apart for a specific purpose, office, or duty.” But OIG fails to explain why that “ordinary meaning” requires the Secretary to identify “DHS employees by name” before they can exercise authority under § 1315. A person can be set apart for a specific purpose without being individually named. Whoever pulls the sword out of the stone has been set apart for a specific purpose: To be the king of England. The test is clear and the person who satisfies this test is clearly identifiable, which is all that is required. Or to take a more practical example, say that the Secretary authored a designation stating, “All CBP officers and agents stationed in the Miami Field Office are designated under 40 U.S.C. § 1315(b)(1) to protect Claude Pepper Federal Building in Miami.” Such a designation does not name individual officers, but it is nonetheless clear that certain officers have been set apart for a specific duty. And yet, under OIG’s logic, this order would be invalid. Such an interpretation inappropriately adds atextual limitations to the broad authority given to the Secretary by Congress.

The OIG seeks support for its atextual interpretation by departing from the statute and instead pointing to the fact that the memo from FPS Director Patterson repeatedly uses the pronoun “you.” The OIG reasons that the repeated use of that pronoun shows that the FPS Director intended to take a “name-specific approach” in designating employees. Of course, the

¹¹ OIG Management Alert at 3.

¹² E.g., *Crane v. Comm’r of Internal Revenue*, 331 U.S. 1, 6 (1947); *Meeks v. West*, 216 F.3d 1363, 1366 (Fed. Cir. 2000).



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pronoun “you” is both the singular and plural form of that second person pronoun.¹³ “You” can refer to an individual (“John, will you please pass the salt?”) or to a large group of people (“We will give you 10 minutes to disperse”). In the former example, the speaker knows exactly who he is addressing; in the latter, he is speaking to a group of people, who he may or may not be able to individually identify. In this case, the FPS Director’s memo was addressed to “Distribution,” not a particular individual. As such, it is clear that the Director was adopting the plural use of the pronoun and directing his designation towards a class of individuals.

Further, nothing in the ordinary meaning of the term “designate” requires all the steps in the designation process to happen at a discrete moment in time or somehow precludes the Secretary or his designee from adopting a *process* of designation. In fact, adopting a process of designation often better comports with § 1315 and DHS guidelines. Section 1315 provides that the authorities granted in § 1315(b) must be exercised “in accordance with guidelines approved by the Secretary and the Attorney General.”¹⁴ In order to comply with those guidelines, the FPS Director provided that “[p]rior to utilizing [section 1315] authority, you are required to receive legal briefings provided by FPS legal advisors.” It was only after that training that the individual officer or agent was authorized to exercise authorities under § 1315. The OIG’s Management Alert places much emphasis on knowing exactly when the designation occurred. But that question is purely academic: Whether the designation happened at the moment the FPS Director issued the designation memorandum (but before they were authorized to exercise § 1315 authorities) or instead occurred after the officers or agents received the required legal briefings makes no difference under the statute, so long as all the conditions were met *prior to* any officer or agent exercising § 1315 authority.

OIG does not claim that it has identified any officers that exercised § 1315 authority that did not go through the Director’s five-step designation process. OIG’s only claim is that at the time the Director issued the designation memorandum, he could not identify the officers by name. Under OIG’s view, had the Director waited until the required legal briefing before issuing the designation memorandum, the designation would have been valid. Such a formalistic view finds no place in the text of § 1315 and needlessly limits the required operational flexibility that is necessary for FPS to effectively protect federal property.

C. OIG’s Management Alert is Factually Incorrect

Apart from its flawed legal interpretation, OIG also seems to suggest that the Director’s designation was invalid because “it is not possible to identify anyone he designated.” To the extent OIG is claiming that there is no list of designated officers and agents, it is flatly wrong. FPS has a searchable list of all individual employees who completed the Department’s required five-step cross-designation process. FPS maintained this searchable list, and utilizing this list, FPS can identify exactly which officers are designated to protect federal property under 40 U.S.C. § 1315. A partially redacted copy of this list is attached to this response as Appendix A, and the Appendix is a partial example or snapshot of the entire dynamic roster of § 1315 designated officers maintained by FPS.

¹³ See Oxford English Grammar 166, Sidney Greenbaum, Oxford English Press (1996).

¹⁴ 40 U.S.C. § 1315(f).



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The Management Alert also states that “several law enforcement personnel were deployed to Portland, Oregon, to augment FPS’ protection efforts, but may not have received training on 40 U.S.C. § 1315 before they were deployed.”¹⁵ OIG further notes that it identified “several individuals” who deployed, but FPS could not confirm these individuals received training.¹⁶

These OIG statements misunderstand component deployment decisions and the FPS Director’s cross-designation requirements as set forth in the designation memoranda. First, FPS never represented that each DHS employee deployed in support of FPS was cross-designated. For instance, some components deployed support personnel who did not perform § 1315 law enforcement duties (*i.e.*, intelligence analysts, desk officers, and public affairs specialists). Next, due to travel and logistical constraints, the components may have deployed personnel who completed the § 1315 legal orientation training onsite rather than pre-deployment. Whether the DHS employee received the legal orientation training prior to or once deployed is not the relevant question—it is whether the employee satisfied the training requirement before he or she exercised legal authority under § 1315, and FPS has worked diligently to ensure the training requirement is met. To that end, the FPS Director specifically maintains dynamic, rolling, by-name cross-designation rosters to ensure accountability for those individual personnel who received both consent and concurrence to receive §1315 cross-designation and completed the required cross-designation training.

CONCLUSION

For the foregoing reasons, DHS respectfully disagrees with OIG’s suggestion that the Department’s delegations of law enforcement authority under 40 U.S.C. § 1315 to the USM and Director of FPS are invalid or otherwise require additional ratification. As explained above, implementation of the Secretary’s authority pursuant to § 1315 was validly delegated to the USM on October 25, 2019 by former Acting Secretary Kevin McAleenan through Change 3 to Delegation No. 00002. Further, the authority to cross-designate DHS officers was re-delegated to the FPS Director through DHS Delegation No. 02500. As described above, DHS non-concurs with OIG’s recommendation to take additional steps to ensure that the USM and the FPS Director have received properly delegated authority to designate DHS employees under 40 U.S.C. § 1315(b)(1).

DHS also non-concurs with OIG’s interpretation of 40 U.S.C. § 1315(b)(1) and the corresponding legal conclusions regarding specific DHS officer designations pursuant to the FPS Director’s delegated authority. The FPS Director, with the consent of the impacted DHS Component Heads, lawfully designated a readily identifiable universe of DHS officers with law enforcement authority pursuant to § 1315. Further, § 1315 does not impose a temporal requirement to immediately or simultaneously identify by name the designated DHS officers prior to the completion of § 1315 legal orientation training. Rather, consistent with both the designation authority in § 1315(b) and the training requirements in the Secretary/Attorney General Guidelines, issued incident to § 1315(f), the FPS Director drafted the designation

¹⁵ OIG Management Alert at 6.

¹⁶ *Id.*



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memoranda to condition the performance of official duties and exercise of police powers under § 1315(b) on the receipt of relevant legal training. The FPS Director maintains awareness of and monitors the active rosters of individually designated officers, which information is readily available to the Department's leadership and oversight bodies.



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APPENDIX A:

**Summary and Partial Excerpt of Roster of DHS
Personnel Designated Pursuant to 40 U.S.C. § 1315**



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Department of Homeland Security

FPS-Training and Professional Development

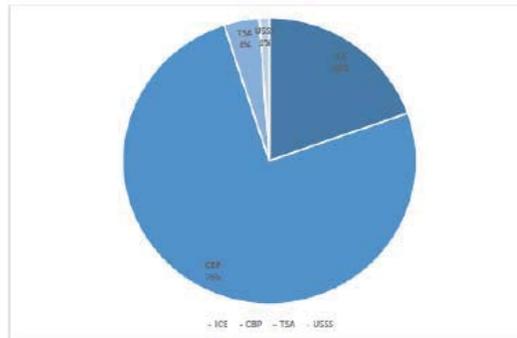


Training and Professional Development Adobe Connect - Cross Designation Training Program

	TOTAL ATTENDING CLASS includes Persons Attending more than once	Taken the class more than once	TOTAL INDIVIDUALS TRAINED	Designation Expires
CBP	3295	103	3192	31-Dec-20
ICE	378	8	370	31-Dec-20
FPS	5	0	5	NA
HBI	447	2	445	31-Dec-20
ICE-ERO	312	2	310	31-Dec-20
OCSSO	2	0	2	NA
TSA	25	0	26	31-Dec-20
USBP	1170	27	1143	31-Dec-20
USSS	63	0	63	31-Dec-20
FAMS	200	1	199	31-Dec-20
TOTAL	5898	143	5755	

Combined Organization

ICE	1125
CBP	4335
TSA	225
USSS	63
OCSSO	2
FPS	5
TOTAL	5755





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FPS - Training and Professional Development



Training and Professional Development
Adobe Connect - Cross Designation Training Program

LAST	FIRST	MI	ORGANIZATION	DATE	SESSION TIME	COURSE NUMBER	EMAIL ADDRESS
			CBP	7/9/2020	1PM	CDTP-20-0022-00	
			ICE	7/2/2020	1PM	CDTP-20-0014-00	
			CBP	7/9/2020	1PM	CDTP-20-0022-00	
			ICE-ERO	7/2/2020	10AM	CDTP-20-0013-00	
			HSI	6/30/2020	10AM	CDTP-20-0009-00	
			HSI	6/30/2020	1PM	CDTP-20-0010-00	
			CBP	7/27/2020	1PM	CDTP-20-0026-00	
			USBP	9/3/2020	1PM	CDTP-20-0034-00	
			CBP	7/9/2020	1PM	CDTP-20-0022-00	
			HSI	6/8/2020	10PM	CDTP-20-0002-00	
			CBP	7/3/2020	5PM	CDTP-20-0014-00	
			CBP	7/8/2020	1PM	CDTP-20-0019-00	
			CBP	7/9/2020	1PM	CDTP-20-0022-00	
			ICE	6/30/2020	10AM	CDTP-20-0009-00	
			HSI	6/24/2020	4PM	CDTP-20-0008-00	
			USBP	7/21/2020	1PM	CDTP-20-0024-00	
			CBP	6/12/2020	430PM	CDTP-20-0006-00	
			CBP	7/9/2020	1PM	CDTP-20-0022-00	
			CBP	7/9/2020	1PM	CDTP-20-0022-00	
			USBP	7/7/2020	6PM	CDTP-20-0017-00	
			USBP	7/21/2020	1PM	CDTP-20-0024-00	
			CBP	9/14/2020	1PM	CDTP-20-0036-00	
			USBP	10/6/2020	1PM	CDTP-20-0038-00	
			CBP	7/27/2020	1PM	CDTP-20-0026-00	
			ICE-ERO	7/1/2020	10AM	CDTP-20-0011-00	
			USBP	7/7/2020	1PM	CDTP-20-0016-00	
			HSI	9/18/2020	1PM	CDTP-20-0036-00	
			CBP	7/8/2020	1PM	CDTP-20-0019-00	
			ICE	9/3/2020	1PM	CDTP-20-0034-00	
			CBP	7/24/2020	1PM	CDTP-20-0025-00	
			CBP	7/21/2020	1PM	CDTP-20-0024-00	
			HSI	10/8/2020	1PM	CDTP-20-0038-00	
			CBP	7/3/2020	5PM	CDTP-20-0014-00	
			CBP	7/21/2020	1PM	CDTP-20-0024-00	
			USBP	9/11/2020	1PM	CDTP-20-0035-00	
			CBP	7/27/2020	1PM	CDTP-20-0026-00	
			ICE	7/2/2020	1PM	CDTP-20-0014-00	
			USBP	7/7/2020	1PM	CDTP-20-0016-00	
			CBP	7/9/2020	1PM	CDTP-20-0022-00	
			CBP	7/21/2020	1PM	CDTP-20-0024-00	
			CBP	7/3/2020	5PM	CDTP-20-0014-00	
			CBP	6/30/2020	10AM	CDTP-20-0009-00	
			CBP	7/9/2020	1PM	CDTP-20-0022-00	
			CBP	7/21/2020	1PM	CDTP-20-0024-00	
			ICE	7/2/2020	10AM	CDTP-20-0013-00	
			USBP	7/29/2020	1PM	CDTP-20-0027-00	
			USBP	7/30/2020	1PM	CDTP-20-0028-00	
			CBP	9/14/2020	1PM	CDTP-20-0036-00	
			HSI	9/18/2020	1PM	CDTP-20-0036-00	
			ICE-ERO	7/1/2020	2PM	CDTP-20-0012-00	
			CBP	7/21/2020	1PM	CDTP-20-0024-00	
			FAMS	9/3/2020	1PM	CDTP-20-0034-00	
			CBP	6/10/2020	4PM	CDTP-20-0005-00	
			CBP	7/21/2020	1PM	CDTP-20-0024-00	
			HSI	7/1/2020	2PM	CDTP-20-0012-00	
			USBP	7/7/2020	1PM	CDTP-20-0016-00	
			USBP	7/21/2020	1PM	CDTP-20-0024-00	
			CBP	9/14/2020	1PM	CDTP-20-0036-00	
			USBP	10/6/2020	1PM	CDTP-20-0038-00	
			CBP	7/24/2020	1PM	CDTP-20-0025-00	
			ICE	9/18/2020	1PM	CDTP-20-0036-00	
			CBP	7/21/2020	1PM	CDTP-20-0024-00	
			CBP	7/3/2020	5PM	CDTP-20-0014-00	
			CBP	7/24/2020	1PM	CDTP-20-0025-00	
			ICE	7/2/2020	1PM	CDTP-20-0014-00	
			CBP	7/8/2020	1PM	CDTP-20-0019-00	
			CBP	7/3/2020	5PM	CDTP-20-0014-00	
			CBP	7/27/2020	1PM	CDTP-20-0026-00	
			USBP	10/6/2020	1PM	CDTP-20-0038-00	
			USBP	7/1/2020	1PM	CDTP-20-0012-00	
			CBP	7/3/2020	5PM	CDTP-20-0014-00	
			CBP	7/27/2020	1PM	CDTP-20-0026-00	
			CBP	9/14/2020	1PM	CDTP-20-0036-00	
			CBP	7/9/2020	1PM	CDTP-20-0022-00	
			CBP	6/10/2020	10AM	CDTP-20-0005-00	
			ICE-ERO	7/2/2020	10AM	CDTP-20-0013-00	
			CBP	7/8/2020	1PM	CDTP-20-0019-00	
			ICE	7/2/2020	10AM	CDTP-20-0013-00	
			CBP	7/24/2020	1PM	CDTP-20-0025-00	
			CBP	7/7/2020	1PM	CDTP-20-0016-00	
			CBP	7/27/2020	1PM	CDTP-20-0026-00	
			CBP	7/27/2020	1PM	CDTP-20-0026-00	
			HSI	6/24/2020	4PM	CDTP-20-0008-00	
			CBP	7/3/2020	5PM	CDTP-20-0014-00	
			ICE-ERO	7/1/2020	10AM	CDTP-20-0011-00	
			FAMS	9/3/2020	1PM	CDTP-20-0034-00	
			HSI	7/1/2020	2PM	CDTP-20-0012-00	
			CBP	7/1/2020	2PM	CDTP-20-0012-00	
			CBP	7/3/2020	5PM	CDTP-20-0014-00	



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Appendix C
Sample Memorandum from FPS Director

U.S. Department of Homeland Security
Management Directorate
Federal Protective Service
Washington, DC 20528



**Homeland
Security**

MEMORANDUM FOR: DISTRIBUTION

FROM: L. Eric Patterson
Director *L. E. Patterson*

SUBJECT: DESIGNATION OF 40 U.S.C. § 1315 LAW ENFORCEMENT
FOR UNITED STATES CUSTOMS AND BORDER
PROTECTION PERSONNEL

With the consent of the Acting Commissioner of the U.S. Customs and Border Protection (CBP), and pursuant to my delegated authorities from the Under Secretary of Management, as memorialized in DHS Delegation No. 02500 § II(D) (Dec. 18, 2019) and Title 40, United States Code, Section 1315(b)(1), I designate you as a law enforcement officer for duty in connection with your support of the Federal Protective Service (FPS) in the protection of federal property and persons on the impacted federal property that are under FPS's protection responsibility.

This designation is limited to law enforcement functions on the federal property assigned to you by FPS. This designation expires 60 days from the date of my signature.

While engaged in the performance of official duties, you have the authority to use the following police powers:

"You are authorized to conduct investigations; require and receive information relating to offenses; serve and execute search and arrest warrants; serve subpoenas and summonses; administer oaths; make arrests without warrant; take actions to preserve the peace while protecting federal government facilities and personnel; bear firearms; and perform other activities for the promotion of Homeland Security in accordance with Title 40 United States Code Section 1315 as created by the Homeland Security Act of 2002."

Prior to utilizing this authority, you are required to receive legal briefings provided by FPS legal advisors on 40 U.S.C. § 1315 authorities and jurisdiction, to include relevant criminal statutory and regulatory provisions enforceable on the federal property.

Distribution:
U.S. Customs and Border Protection Personnel Listed in the Attachment.

Cc:
Mark Alan Morgan
Acting Commissioner
U.S. Customs and Border Protection



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