

# AMERICORPS OIG USE OF FORCE POLICY

## 1. GENERAL POLICY ON USE OF FORCE

- A. Application: This policy applies to all officers (Special Agents or SAs) who are authorized to make arrests and carry firearms, and who are responsible for the presentation, detection, and investigation of crime or the apprehension of alleged offenders as defined in section 21 of the U.S. Department of Justice (DOJ) policy on the use of deadly force, adopted May 22, 2022.
- B. The primary consideration for the use of force is the timely and effective application of the appropriate level of force necessary lawfully to control an individual or situation. Paramount considerations are preserving life and preventing physical injury. "Force" is any intervention intended to stop an unlawful action or to introduce control or compliance. SAs may use only the force that is objectively reasonable to effectively gain control of an incident, while protecting the safety of the agent and others, in keeping with the standards set forth in *Graham v. Connor*, 490 U.S. 386 (1989), including the escalation/de-escalation of resistance and other acts of the subject. Force generally is allowed if necessary to (a) overcome resistance to the officer's lawful commands, (b) to effect an arrest or detain a suspect, (c) maintain custody and prevent escape, or (d) protect the officer or other persons.
- C. The implementation of the levels of force is intended to be fluid in nature and not a rigid process requiring a systematic approach before proceeding or receding to another level of force. SAs will report to their supervisor, as soon as practical, any incident involving the use of force. As outlined below, the OIG follows the U.S. Department of Justice (DOJ) policy on the use of deadly force, adopted May 22, 2022, as revised or updated from time to time. Accordingly, all situations will be resolved using that amount of force determined to be reasonably necessary by an SA under the totality of circumstances.
- D. The OIG provides SAs with law enforcement equipment and training, on at least an annual basis, to assist them in effecting lawful control and overcoming unlawful resistance. Firearms training should simulate actual shooting situations and conditions. A variety of computer-simulation training is available, together with established and recognized tactical, exertion, and stress courses. SAs are also trained in de-escalation tactics and techniques designed to gain voluntary compliance from a subject before using force, and such tactics and techniques should be employed if objectively feasible and if they would not increase the danger to the SA or others. Training must reinforce the appropriate exercise of discretion and judgment in using less-than-lethal and deadly force in accordance with this

policy. The OIG also provides SAs with training in the affirmative duty to render medical aid and to intervene to prevent or stop, as appropriate, any officer from engaging in excessive force. Training techniques include verbal commands and physical techniques (with and without equipment) and is provided at least annually.

## **2. USE OF NON-LETHAL DEVICES**

SAs using an authorized non-lethal device will use only the minimum force necessary to control a subject and will stop using the device when control is secured.

### **A. Expandable Tactical Baton**

1. There may be instances in which a SA will be confronted by individual(s) who, while not armed with firearms or other dangerous weapons, present a clear danger to the safety of the SA and/or others, under an “objective reasonableness” standard. In such cases, non-lethal means of incapacitating the individual should be used. The tactical baton (baton) is the OIG non-lethal weapon intended for these situations.
2. SAs are authorized to carry the OIG issued baton while in the performance of their official duties, provided they have been trained in its use. A baton will be provided to each SA who has successfully completed training in its use.
3. Training in the use of the baton will be provided by an OIG instructor or other qualified instructor(s). This training will be documented, and a copy included in the law enforcement-training file maintained for each SA.
4. Batons may be used by a SA when the SA has a reasonable belief that such force is necessary for example, when physical force, or the immediate threat of physical force, is used against the SA while conducting official business or others.
5. Any use of a baton by a SA will be reported in writing to the AIGI within 24 hours, including all the facts and circumstances surrounding its use.
6. The baton is not a substitute for the use of firearms in those situations where the use of deadly force is justified. Rather, it provides the SA with non-lethal means of subduing an individual when the use of deadly force is inappropriate.

## **3. RESTRAINING DEVICES**

When it is objectively reasonable to restrain a dangerous individual or person who has been arrested by a SA, standard issued handcuffs will be used, or handcuffs purchased

personally by the SA and approved by the AIGI. OIG issued flexi cuffs may be used to temporarily restrain an individual. SAs are required to carry their handcuffs when armed.

#### **4. PHYSICAL INJURY**

- A. SAs who cause physical injury by the use of force will, as appropriate, immediately seek emergency medical treatment for those persons injured, render first aid and notify local law enforcement authorities of the incident and location. SAs will be trained in, and must recognize and act upon, the affirmative duty to request and/or render medical aid, as appropriate, where needed.
- B. SAs who are injured as a result of a use of force encounter will report this injury promptly to the AIGI. The AIGI will immediately notify the IG if an SA is injured.

#### **5. USE OF DEADLY FORCE**

The OIG will follow the United States DOJ policy on the use of deadly force, updated and adopted May 20, 2022, as revised and updated from time to time. That policy is set forth below. Each OIG SA must be familiar with all the material in that policy before he/she is allowed to carry a firearm.

#### **6. DEADLY FORCE POLICY**

This outline provides guidance to OIG SAs in the use of deadly force. The following general principles govern application of the OIG's deadly force policy:

- A. It is the policy of the United States DOJ and the OIG to value and preserve human life. SAs may use only the force that is objectively reasonable to effectively gain control of an incident, while protecting the safety of the SA and others.
- B. SAs may use force only when no reasonably effective, safe, and feasible alternative appears to exist.
- C. The reasonableness of an SA's decision to use deadly force under this policy must be viewed from the perspective of a reasonable officer on the scene and must consider the fact that agents are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving, and without the advantage of 20/20 hindsight, about the amount of force that is necessary in a particular situation.

## **7. POLICY TEXT**

- A. Defense of Life -- SAs may use deadly force only when necessary, that is, when the SA has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the SA or to another person.
- B. Fleeing Subject -- Deadly force may not be used solely to prevent the escape of a fleeing suspect.
- C. Vehicles --Firearms may not be discharged solely to disable moving vehicles. Specifically, firearms may not be discharged to disable a moving vehicle unless: (1) a person in the vehicle is threatening the SA or another person with deadly force by means other than the vehicle; or (2) the vehicle is operated in a manner that threatens to cause death or serious physical injury to the officer or others and no other objectively reasonable means of defense appear to exist, which includes moving out of the path of the vehicle. Firearms may not be discharged from a moving vehicle except in exigent circumstances. In these situations, an agent must have an articulable reason for this use of deadly force.
- D. Verbal Warnings -- If feasible, and if to do so would not increase the danger to the SA or another, a verbal warning to submit to the authority of the SA shall be given prior to the use of deadly force.
- E. Warning Shots – Warning shots are not permitted.
- F. SAs will be trained in alternative methods and tactics for handling resisting subjects, which must be used when the use of deadly force is not authorized by this policy.
- G. Deadly force should not be used against persons whose actions are a threat solely to themselves or property, unless that individual also poses an imminent danger of death or serious physical injury to the SA or others in close proximity.

## **8. DE-ESCALATION**

- A. SAs will be trained at least annually in de-escalation tactics and techniques designed to gain voluntary compliance from a subject before using force, and such tactics and techniques should be employed if objectively feasible and if they would not increase the danger to the SA or others. When feasible, reducing the need for force allows SAs to secure their own safety as well as the safety of the public.

## 9. AFFIRMATIVE DUTY TO INTERVENE

- A. SAs will be trained at least annually in, and must recognize and act upon, the affirmative duty to intervene to prevent or stop, as appropriate, any officer from engaging in excessive force or any other use of force that violates the Constitution, other federal laws, or United States DOJ policies on the reasonable use of force.

## 10. DEFINITIONS

- A. Deadly Force – Any use of force that creates a substantial risk of causing death or serious physical injury.
- B. Necessity -- In evaluating the necessity to use deadly force, two factors are relevant: (1) the presence of an imminent danger to an agent or another and (2) the absence of safe alternatives to the use of deadly force.
  - 1. Imminent Danger: A danger from an individual whose apparent intent is to inflict serious bodily injury or death and the individual has the ability and opportunity to realize this intention.
  - 2. Absence of a safe alternative: SAs are not required to use or consider alternatives that increase danger to themselves or to others. If a safe alternative to the use of deadly force is likely to achieve the purpose of averting an imminent danger, deadly force is not necessary. Among the factors affecting the ability of SAs safely to seize a suspect, the following are relevant:
    - a. Response to command -- Verbal warning prior to using deadly force is required when feasible--i.e., when to do so would not significantly increase the danger to an agent or another. While compliance with agents' commands may make the use of deadly force unnecessary, ignoring such commands may present agents with no safe option.
    - b. Availability of cover -- Cover provides a tactical advantage. An armed suspect attempting to gain a position of cover may necessitate the use of deadly force; conversely, an agent in a position of cover may gain additional time to assess the need to use deadly force without incurring significant additional risks.
    - c. Time constraints -- The inherent disadvantages posed by the amount of time necessary to conduct a threat assessment, coupled with the lack of a reliable means of causing an instantaneous halt to a

threatening action, impose significant constraints on the time frame in which agents must assess the nature and imminence of a threat.

- C. Less-Lethal Force: Any use of force other than that which is considered deadly force that involves the physical effort to control, restrain, or overcome the resistance of another.
- D. Objectively Reasonable: An SA must evaluate the need to use force and the level of force needed in light of the totality of the circumstances known to that officer at the time of the decision, based on what a reasonably prudent officer would do under the same or similar circumstances.
- E. Serious Bodily Injury: Injury that involves a substantial risk of death, protracted and obvious disfigurement, or extended loss or impairment of the function of a body part or organ.
- F. De-Escalation: Acting or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the level of force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.

## **11. APPLICATION OF DEADLY FORCE**

- A. At all times during and after deciding to use deadly force, SAs must continually reassess the situation, where possible, and ensure that the level of force being used meets the objective reasonableness standard.
- B. When deadly force is permissible under the policy, attempts to shoot to cause minor injury may be unrealistic and can prove dangerous to SAs and others because they are unlikely to achieve the intended purpose of bringing an imminent danger to a timely halt.
- C. Even when deadly force is permissible, SAs should assess whether its use creates a danger to third parties that outweighs the likely benefits of its use.

## **12. CHOKEHOLDS & CAROTID RESTRAINTS; KNOCK & ANNOUNCE REQUIREMENT**

- A. The following reflects the Attorney General Guidelines regarding chokeholds and Carotid Restraints; Knock & Announce requirements, issued September 13, 2021.

## B. Chokeholds and Carotid Restraints

1. Chokeholds apply pressure to the throat or windpipe and restrict an individual's ability to breathe. The carotid restraint technique restricts blood flow to the brain causing temporary unconsciousness. Given the inherent dangerousness of chokeholds and carotid restraints, SAs are prohibited from using a chokehold or a carotid restraint unless that standard of necessity for use of deadly force is satisfied.

## C. "No Knock" Entries

1. SAs are generally required to "knock and announce" their identity, authority and purpose, and demand to enter before making entry to execute a warrant in a private dwelling. U.S. Const., amend. IV; 18 U.S.C. § 3109; see *Hudson v. Michigan*, 547 U.S. 586 (2006). Once that announcement is made, agents must wait a reasonable amount of time based on the totality of the circumstances to permit the occupant to open the door before making entry into a dwelling. See *United States v. Banks*, 540 U.S. 31 (2003). The Supreme Court has recognized, however, that there are situations where it is not constitutionally necessary to "knock and announce" before entering a dwelling-namely, where the officer has reasonable grounds to believe that knocking and announcing would create a threat of physical violence, likely result in destruction of evidence, or be futile. See *Hudson*, 547 U.S. at 589-90. Because of the risk posed to both law enforcement and civilians during the execution of "no knock" warrants, it is important that this authority be exercised only in the most compelling circumstances.
  - a. An SA may seek judicial authorization to conduct a "no knock" entry only if that agent has reasonable grounds to believe at the time the warrant is sought that knocking and announcing the agent's presence would create an imminent threat of physical violence to the agent and/or another person. Prior to seeking judicial authorization for a "no knock" entry, an SA must first obtain approval from both the Criminal Chief of the relevant U.S. Attorney's Office and the Inspector General or the AIGI. Once judicial authorization is obtained, agents may proceed without "knocking and announcing" their presence unless they learn off acts that negate the circumstances that justified this exception to the "knock and announce" rule.
  - b. If an agent did not anticipate the need for a "no knock" entry at the time the warrant was sought, the agent may conduct a "no knock" entry only if exigent circumstances arise at the scene such that knocking and announcing

the agent's presence would create an imminent threat of physical violence to the agent and/or another person. If the agent relies on these exigent circumstances exception in executing the warrant, the agent shall immediately notify the AIGI or DAIGI and provide written notice to the United States Attorney.

### **13. IMPLEMENTATION, COMPLIANCE, AND REPORTING**

- A. The AIGI is responsible for the implementation of these policies. The AIGI is also responsible for ensuring that agent training is aligned with these policies and provided no less than annually.
- B. The AIGI is responsible for submitting data on a monthly basis to the FBI National Use-of-Force Data Collection, in accordance with the definitions and categories set forth by the FBI. Such data shall include either all deaths of a person due to law enforcement use of force; all serious injuries of a person due to law enforcement force; all discharges of a firearm by law enforcement at or in the direction of a person not otherwise resulting in death or serious bodily injury; or if applicable, a report for each category that no qualifying incidents occurred and:
  - a. Information about the incident, including date, time, and location; the reason for initial contact; the offenses of which the subject was suspected, if any; the charges filed against the suspect by a prosecutor, if any; and the National Incident-Based Reporting System (NIBRS) record of local incident number of the report;
  - b. Information about the subject of the use of force, including demographic data by subcategory to the maximum extent possible; types of force used against the subject; resulting injuries or death; and reason for the use of force, including any threat or resistance from, or weapon possessed by the subject;
  - c. Information about the officers involved, including demographic data by subcategory to the maximum extent possible; years of service in law enforcement and employing agency at the time of the incident; and resulting injuries or death; and
  - d. Such other information as the Attorney General deems appropriate.
- C. The AIGI shall issue annual reports to the President – and post the reports publicly – setting forth the number of no-knock entries that occurred pursuant to judicial authorization; the number of no-knock entries that occurred pursuant to exigent



circumstances; and disaggregated data by circumstances for no-knock entries in which a law enforcement officer or other person was injured in the course of a no-knock entry.