

Department of Homeland Security



U.S. Immigration
and Customs
Enforcement

Office of Investigations

**Live and Photographic
Lineups
Handbook**

**UNICORN
RIOT**

OI HB 08-05

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OFFICIAL USE ONLY

Foreword

The Live and Photographic Lineups Handbook provides a single source of national policies, procedures, responsibilities, guidelines, and controls that should be followed by U.S. Immigration and Customs Enforcement (ICE) Office of Investigations (OI) Special Agents when conducting live and/or photographic lineups. This Handbook contains instructions and guidance that will help ensure uniformity and operational consistency at all OI field offices. The Live and Photographic Lineups Handbook is available on the OI Proprietary Website.

All directives, memoranda, bulletins, manuals, handbooks, and other guidelines and procedures relating to live and photographic lineups issued by the former U.S. Customs Service or Immigration and Naturalization Service (INS) no longer apply to ICE OI and are hereby superseded, including, but not limited to, INS Special Agent Field Manual, Chapter 16, Section 16.2, entitled "Photographs and Lineups."

The Live and Photographic Lineups Handbook is an internal policy of OI and is not intended to confer any right or benefit on any private person or party. If disclosure of this Handbook or any portion of it is demanded in any judicial or administrative proceeding, the OI Information Disclosure Unit, Mission Support Division, as well as the appropriate ICE Counsel and/or U.S. Attorney, should be consulted so that appropriate measures can be taken to invoke privileges against disclosure. This Handbook contains information which may be exempt from disclosure to the public. Any further request for disclosure of this Handbook or information contained herein should be referred to the OI Information Disclosure Unit.

The OI Policy Unit is responsible for coordinating the development and issuance of OI policy. All suggested changes or updates to this Handbook should be submitted to the OI Policy Unit.



Marc M. Forman
Director, Office of Investigations



Date

**LIVE AND PHOTOGRAPHIC LINEUPS
HANDBOOK**

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LIVE AND PHOTOGRAPHIC LINEUPS HANDBOOK

Chapter 1. PURPOSE AND SCOPE

The Live and Photographic Lineups Handbook establishes policy and procedures for U.S. Immigration and Customs Enforcement (ICE) Office of Investigations (OI) Special Agents (SAs) when conducting live and/or photographic lineups.

Chapter 2. AUTHORITY/REFERENCE

Department of Justice Research Report entitled “Eyewitness Evidence, A Guide for Law Enforcement,” dated October 1999.

Chapter 3. DEFINITIONS

The following definitions apply to this Handbook:

3.1 Filler

A **filler** is a non-suspect individual or photograph of a non-suspect individual used to complete or “fill in” a lineup.

3.2 Live Lineup

A **live lineup** is a group of individuals consisting of a suspect and multiple “fillers” presented in person to a witness, either simultaneously or sequentially, for the purposes of identification.

3.3 Photographic Lineup

A **photographic lineup** is a group of photographs of individuals consisting of a suspect and multiple “fillers” presented by photograph to a witness, either simultaneously or sequentially, for the purposes of identification.

Chapter 4. RESPONSIBILITIES

4.1 Director, Office of Investigations

The Director of OI has the overall responsibility for the oversight and implementation of the policies and procedures set forth in this Handbook.

4.2 Special Agents in Charge

OI Special Agents in Charge are responsible for implementing the policies and procedures set forth in this Handbook within their areas of responsibility.

4.3 Special Agents

OI SAs are responsible for complying with the provisions of this Handbook.

Chapter 5. POLICY

5.1 Composing Lineups

The SA shall compose the lineup in such a manner that the suspect does not unduly stand out. Fair composition of a lineup enables the witness to provide a more accurate identification or non-identification.

5.2 Instructing the Witness Prior to Viewing a Lineup

Prior to presenting a lineup, the SA shall provide instructions to the witness to ensure that the witness understands that the purpose of the identification procedure is to exculpate the innocent as well as to identify the actual suspect. Instructions given to the witness prior to viewing a lineup can facilitate an identification or non-identification based on his or her own memory.

5.3 Conducting the Identification Procedure

The SA shall conduct the lineup in a manner conducive to obtaining accurate identification or non-identification decisions. The identification procedure should be conducted in a manner that promotes the reliability, fairness, and objectivity of the witness' identification.

5.4 Recording Identification Results

The SA shall preserve the outcome of the procedure by documenting any identification or non-identification results obtained from the witness. The record of the outcome of the identification procedure should accurately and completely reflect the identification results obtained from the witness and be sworn or affirmed by the witness.

5.5 Right to Counsel

SAs shall inform suspects of their right to counsel if the lineup takes place after the suspects have been formally charged. The Sixth Amendment right to counsel attaches after suspects have been formally charged, including following an initial appearance in criminal court or the filing of an indictment or criminal information. The United States

Supreme Court has held that a suspect's Sixth Amendment right to counsel is violated by having the suspect participate in a lineup after being formally charged if the identification took place without counsel. However, suspects can make an intelligent waiver of their Sixth Amendment right to counsel and participate in a lineup. (*United States v. Wade* 388 U.S. 218 (1967)) SAs shall advise the suspect of his or her right to counsel at the lineup (see "Advisement of Right to Counsel" in Appendix A). If the suspect agrees to participate without counsel, SAs will have the suspect sign the "Waiver and Consent Declaration" (see Appendix A) and proceed with the lineup. If the suspect is willing to participate without a lawyer being present but refuses to sign the Declaration, SAs shall write the suspect's statement on the "Waiver and Consent Declaration" and proceed with the lineup. If the suspect is not willing to appear without counsel, or counsel refuses to appear, SAs shall cancel the lineup and shall contact the appropriate Assistant United States Attorney (AUSA) for further guidance.

Chapter 6. PROCEDURES

6.1 Conducting Lineups

6.1.1 When conducting a photographic lineup, OI SAs shall:

- A. Include only one suspect in each identification procedure.
- B. Select fillers who generally fit the witness' physical description of the suspect. When there is a limited or inadequate description of the suspect provided by the witness, or when the description of the suspect differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.
- C. If multiple photographs of the suspect are reasonably available to the investigator, select a photograph that resembles the suspect description or appearance at the time of the incident.
- D. Include a minimum of five fillers per identification procedure.
- E. Consider that complete uniformity of features is not required. Avoid using fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
- F. Consider creating a consistent appearance between the suspect and fillers with respect to any unique or unusual feature (e.g., scars, tattoos) used to describe the suspect by artificially adding or concealing that feature.
- G. Consider placing suspects in different positions in each lineup, both across cases and with multiple witnesses in the same case. Position the suspect randomly in the lineup.

- H. When showing a new suspect, avoid reusing fillers in lineups shown to the same witness.
- I. Ensure that no writings or information concerning previous arrest(s) will be visible to the witness.
- J. View the lineup, prior to showing it to the witness, to ensure that the suspect does not unduly stand out.
- K. Preserve the presentation order of the photographic lineup. In addition, the photographs themselves should be preserved in their original condition.

6.1.2 When conducting a live lineup, OI SAs shall:

- A. Include only one suspect in each identification procedure.
- B. Select fillers who generally fit the witness' physical description of the suspect. When there is a limited or inadequate description of the suspect provided by the witness, or when the description of the suspect differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.
- C. Consider placing suspects in different positions in each lineup, both across cases and with multiple witnesses in the same case. Position the suspect randomly unless, where local practice allows, the suspect or the suspect's attorney requests a particular position.
- D. Include a minimum of five fillers per identification procedure.
- E. When showing a new suspect, avoid reusing fillers in lineups shown to the same witness.
- F. Consider that complete uniformity of features is not required. Avoid using fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
- G. Create a consistent appearance between the suspect and fillers with respect to any unique or unusual feature (e.g., scars, tattoos) used to describe the suspect by artificially adding or concealing that feature.
- H. When appropriate, efforts should be made to provide a viewing environment that will allow the witness to clearly view the lineup while obstructing the view of the suspect and fillers so that the witness is not visible. If such an arrangement is not available in the OI office and time permits, consideration should be given to utilizing the facilities of a local law enforcement agency.

6.2 Instructing the Witness Prior to Viewing a Lineup

6.2.1 When conducting a photographic lineup, OI SAs shall:

- A. Advise the witness that knowingly providing false information to a federal agent is an offense under 18 United States Code (U.S.C.) § 1001.
- B. Instruct the witness that he or she will be asked to view a set of photographs.
- C. Instruct the witness that it is just as important to clear innocent persons from suspicion as to identify guilty parties.
- D. Instruct the witness that individuals depicted in lineup photographs may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.
- E. Instruct the witness that the person who committed the crime may or may not be in the set of photographs being presented.
- F. Assure the witness that, regardless of whether identification is made, the authorities will continue to investigate the incident.
- G. Instruct the witness that the procedure requires the investigator to ask a witness to state, in his or her own words, how certain he or she is of any identification.

6.2.2 When conducting a live lineup, OI SAs shall:

- A. Advise the witness that knowingly providing false information to a federal agent is an offense under 18 U.S.C. § 1001.
- B. Instruct the witness that he or she will be asked to view a group of individuals.
- C. Instruct the witness that it is just as important to clear innocent persons from suspicion as to identify guilty parties.
- D. Assure the witness that, regardless of whether identification is made, the authorities will continue to investigate the incident.
- E. Instruct the witness that individuals present in the lineup may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.

- F. Instruct the witness that the procedure requires the investigator to ask the witness to state, in his or her own words, how certain he or she is of any identification.

6.3 Conducting the Identification Procedure

6.3.1 When conducting simultaneous photographic lineups, OI SAs shall:

- A. Provide viewing instructions to the witness as outlined in Section 6.2 above.
- B. Confirm that the witness understands the nature of the lineup procedure.
- C. Avoid saying anything to the witness that may influence the witness' selection.
- D. If identification is made, avoid reporting to the witness any information regarding the individual he or she has selected prior to obtaining the witness' statement of certainty.
- E. Record any identification results and the witness' statement of certainty as outlined in Section 6.4 below.
- F. Document in writing the photographic lineup procedures, including the:
 - 1) Identification information and sources of all photographs used;
 - 2) Names of all persons present at the photographic lineup; and
 - 3) Date and time of the identification procedure.
- G. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

6.3.2 When conducting sequential photographic lineups, OI SAs shall:

- A. Provide viewing instructions to the witness as outlined in Section 6.2 above.
- B. Provide the following additional viewing instructions to the witness:
 - 1) Individual photographs will be viewed one at a time.
 - 2) The photographs are in random order.
 - 3) Take as much time as needed in making a decision about each photograph before moving to the next one.
 - 4) If you see a photograph of the person who committed the crime, identify the photograph.
- C. Confirm that the witness understands the nature of the sequential procedure.

- D. Present each photograph to the witness separately, in a previously determined order, removing those previously shown.
 - E. Avoid saying anything to the witness that may influence the witness' selection.
 - F. If identification is made, avoid reporting to the witness any information regarding the individual he or she has selected prior to obtaining the witness' statement of certainty.
 - G. Record any identification results and the witness' statement of certainty as outlined in Section 6.4 below.
 - H. Document in writing the photographic lineup procedures, including the:
 - 1) Identification information and sources of all photographs used;
 - 2) Names of all persons present at the photographic lineup; and
 - 3) Date and time of the identification procedure.
 - I. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.
- 6.3.3 When conducting a simultaneous live lineup, OI SAs shall:
- A. Provide viewing instructions to the witness as outlined in Section 6.2 above.
 - B. Instruct all those present at the lineup not to suggest in any way the position or identity of the suspect in the lineup.
 - C. Ensure that any identification actions (e.g., speaking, moving) are performed by all members of the lineup.
 - D. Avoid saying anything to the witness that may influence the witness' selection.
 - E. If identification is made, avoid reporting to the witness any information regarding the individual he or she has selected prior to obtaining the witness' statement of certainty.
 - F. Record any identification results and the witness' statement of certainty as outlined in Section 6.4 below.

- G. Document the lineup in writing, including the:
 - 1) Identification information of lineup participants;
 - 2) Names of all persons present at the lineup; and
 - 3) Date and time the identification procedure was conducted.
- H. Document the lineup by photograph or video. This documentation should be of a quality that represents the lineup clearly and fairly.
- I. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

6.3.4 When conducting a sequential live lineup, OI SAs shall:

- A. Provide viewing instructions to the witness as outlined in Section 6.2 above.
- B. Provide the following additional viewing instructions to the witness:
 - 1) Individuals will be viewed one at a time.
 - 2) The individuals will be presented in random order.
 - 3) Take as much time as needed in making a decision about each individual before moving to the next one.
 - 4) If the person who committed the crime is present, identify him or her.
- C. Begin with all lineup participants out of the view of the witness.
- D. Instruct all those present at the lineup not to suggest in any way the position or identity of the suspect in the lineup.
- E. Present each individual to the witness separately, in a previously determined order, removing those previously shown.
- F. Ensure that any identification actions (e.g., speaking, moving) are performed by all members of the lineup.
- G. Avoid saying anything to the witness that may influence the witness' selection.
- H. If identification is made, avoid reporting to the witness any information regarding the individual he or she has selected prior to obtaining the witness' statement of certainty.
- I. Record any identification results and the witness' statement of certainty as outlined in Section 6.4 below.

- J. Document the lineup procedures and content in writing, including the:
 - 1) Identification information of lineup participants.
 - 2) Names of all persons present at the lineup.
 - 3) Date and time the identification procedure was conducted.
- K. Document the lineup by photograph or video. This documentation should be of a quality that represents the lineup clearly and fairly. Photographic documentation can be of either the group or each individual.
- L. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

6.4 Recording Identification Results

When recording identification results, OI SAs shall:

- A. Ensure that no materials indicating previous identification results are visible to the witness.
- B. Ensure that the witness does not write on or mark any materials that will be used in other identification procedures.
- C. Record on ICE Form I-378 both identification and non-identification results in writing, including the witness' own words regarding how sure he or she is.
- D. Ensure that results are signed and dated by the witness.

Advisement of Right to Counsel
and
Waiver and Consent Declaration



**ADVISEMENT OF RIGHT TO COUNSEL
(Lineup)**

Place _____

Date _____

Time _____

You have been asked to participate in a lineup. At the lineup, you will be obliged to stand in a line with other persons, to speak, to move in a certain manner, and/or to put on or remove certain clothing for the purpose of enabling witnesses to make an identification. You are required to participate in the lineup, but you are entitled to have an attorney of your own choosing present. If you cannot afford an attorney but wish to have one present at the lineup, the lineup will be delayed until an attorney has been appointed by a court to represent you. Having an attorney present will help you in the preparation of your defenses to any identification that may be made at the lineup.

However, you may waive your right to have an attorney present at the lineup and consent to participate in the lineup in the absence of an attorney.

WAIVER AND CONSENT DECLARATION

I have read this statement of my rights to have an attorney present at the identification lineup. I have consented to participate in the lineup in the absence of an attorney. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

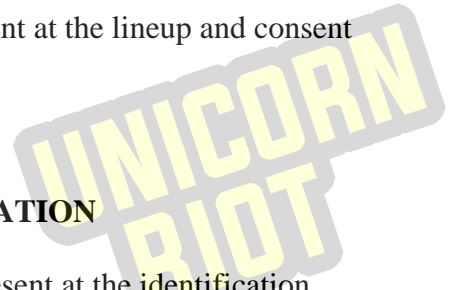
Signed: _____

Witness: _____

Witness: _____

Date: _____

Time: _____



Live or Photographic Lineup Display



Case Number/Title:	Office
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INSTRUCTIONS

Lineup to be conducted: Live / Photographic (*circle one*)

To The Photographic Lineup Viewing Witness:

You are being presented with the photographs of six individuals. Each photograph will be numbered from one (1) to six (6) for identification purposes. You will be asked whether you recognize any of these individuals. If you do, ***please do not place any marks on this document.*** You will be provided with a form for that purpose. While viewing the photographs, remember that hairstyles, beards, or mustaches can change. Also remember that photographs do not always reflect a person's true complexion. Pay no attention to differences in the style of the photographs or to whether they are in color or black and white. Any comments concerning the identity of, or your inability to identify, any individual whose photograph appears in this document should be limited to the U.S. Immigration and Customs Enforcement (ICE) Special Agent who shows it to you, and should not be made in the presence of other persons or witnesses. On page two of this form you should place your initials and the date on one of the lines provided. This does not signify recognition of any individual whose picture is enclosed. It merely establishes for the record that this is the particular photographic display that you have viewed.

To The Live Lineup Viewing Witness:

You are being presented with six individuals in a live lineup. Each individual will be numbered from one (1) to six (6) for identification purposes. You will be asked whether you recognize any of these individuals. If you do, ***please do not place any marks on this document.*** You will be provided with a form for that purpose. While viewing the individuals, remember that hairstyles, beards, or mustaches can change. Any comments concerning the identity of, or your inability to identify, any individual who appears before you should be limited to the U.S. Immigration and Customs Enforcement (ICE) Special Agent who accompanies you, and should not be made in the presence of other persons or witnesses.

To the ICE Special Agent:

No less than six individuals or photographs will be used. In the case of photographs, all six shall be permanently affixed with adhesive cement or glue. Each individual participant or photograph should depict persons similar in physical appearance, i.e., age, race, sex, hair, etc. No more than one suspect of the investigation shall be depicted on any one lineup. No reference will be made on this form, either verbally or in writing, as to the name or identity of any individual participating, either live or via photographic representation, in this lineup. Other than inserting the file number and control office as indicated above, you are to make no notations on this document ***except*** to sign and date it as of the date of preparation (***not the date(s) on which it is shown to any viewing witness, as ICE Form I-378A is provided for that purpose.***) In order to maintain the evidentiary integrity of the live or photographic identification display, no witness will be allowed to view this completed document in the presence of any other witness; no witness will be allowed to view the completed ICE Form I-378A of any other witness; and no witness will be provided copies of this document or any completed ICE Form I-378A.

(Signature and Title of Preparing Special Agent)

(Date of Preparation)

**LIVE/PHOTOGRAPHIC LINEUP DISPLAY
ACKNOWLEDGEMENT**

(circle one)

To The Viewing Witness(es)

Please initial and date this document in the spaces below. Make no other marks or comments of any kind regarding the identification of any individuals or photographs. *(See instructions on the cover for any questions regarding this procedure.)*

Date _____ **Initials** _____

Date _____ **Initials** _____

Date _____ **Initials** _____

Date _____ **Initials** _____

Date _____ **Initials** _____

Date _____ **Initials** _____

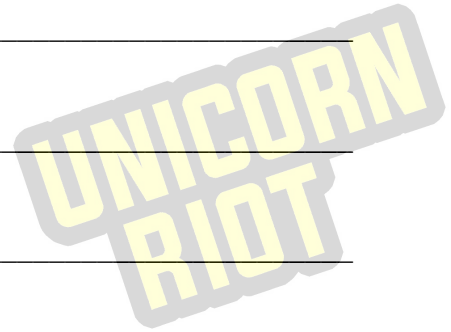
Date _____ **Initials** _____

Date _____ **Initials** _____

Date _____ **Initials** _____

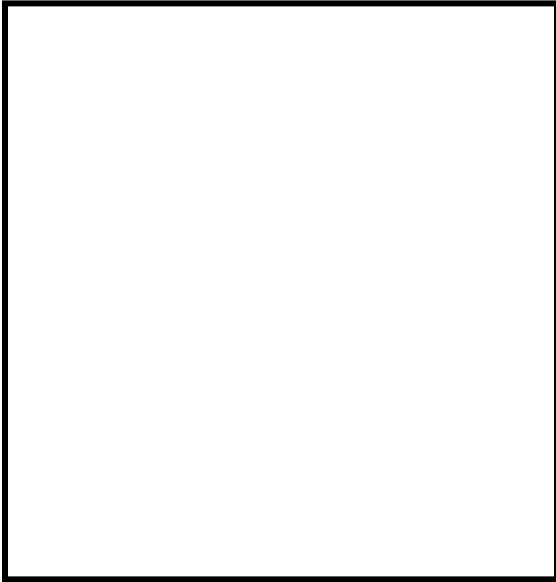
Date _____ **Initials** _____

Date _____ **Initials** _____

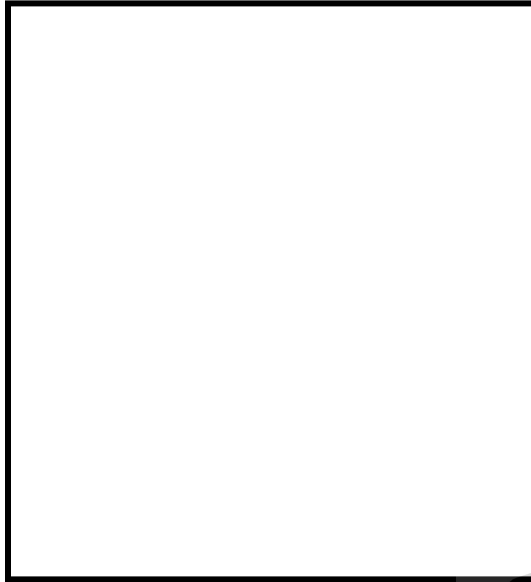


PHOTOGRAPHIC LINEUP DISPLAY

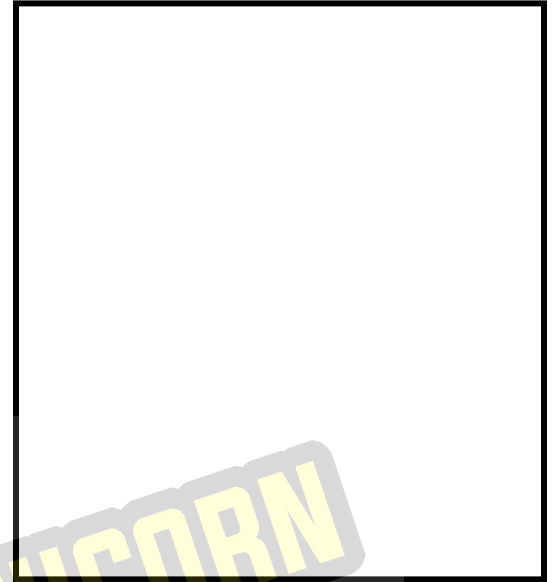
1



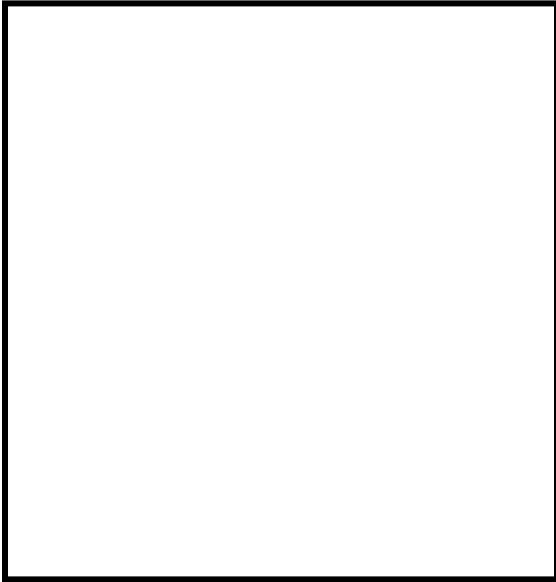
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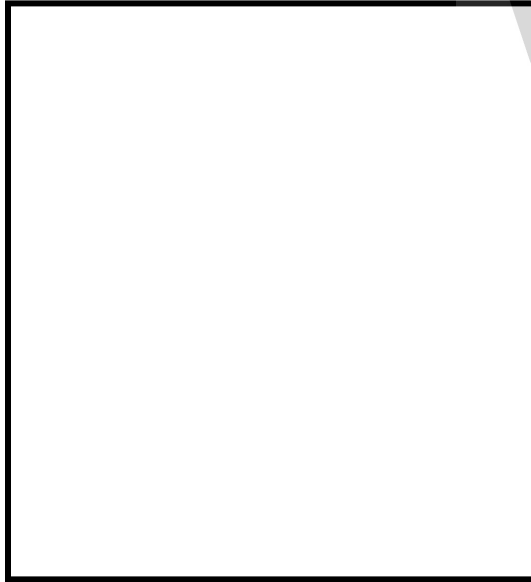
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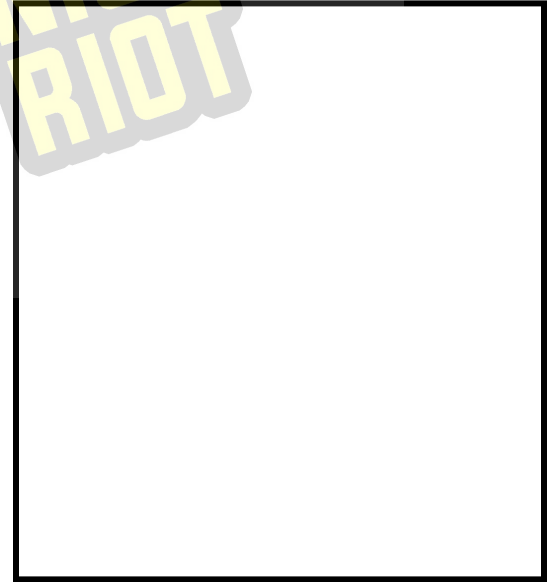
4



5



6



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RIOT

Witness Identification Response of Live/Photographic Lineup Display

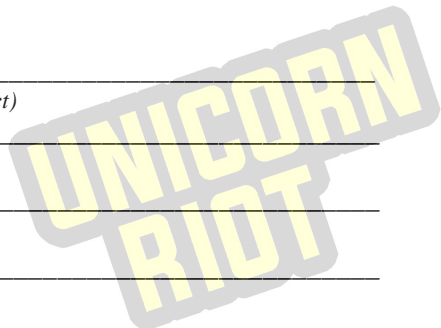


Case Number/Title:	Office
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Date: _____

I, _____, swear or affirm that, today, I have been shown a
(Print or type full name of viewing witness here)
live/photographic lineup display consisting of six (6) persons. The individuals/photographs are numbered, and I
have identified: **None of them** or **Individual/Photograph number** _____ *(Check the box that applies
and insert the number if applicable.)*

as _____
(Name of the suspect, and/or a description of the basis for knowing the suspect)



SIGNED *(Viewing Witness)*

PRINTED NAME *(Viewing Witness)*

SIGNED *(ICE Special Agent)*

PRINTED NAME *(ICE Special Agent)*

SIGNED *(Other ICE Special Agent or Employee Present)*

PRINTED NAME *(Other ICE Special Agent or Employee Present)*

ACRONYMS

A-H

I

ICE U.S. Immigration and Customs Enforcement
INS Immigration and Naturalization Service

J-N

O

OI Office of Investigations

P-R

S

SA Special Agent

T

U

USC U.S. Code

V-Z

