

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

ICE Directive 10089.1: Obtaining Required Fingerprints from Noncompliant Individuals

Issue Date: October 4, 2018

Superseded: None.

Federal Enterprise Architecture Number: 306-112-002a

1. **Purpose/Background.** This Directive sets forth U.S. Immigration and Customs Enforcement (ICE) policy and procedure regarding fingerprinting noncompliant individuals in ICE custody. Individuals in ICE custody routinely cooperate in the fingerprinting process; however, situations may arise in which an individual refuses to cooperate. This Directive is intended to address only those limited circumstances addressed herein and does not alter or supersede, ICE policies regarding the use of force generally, including ICE Policy No. 19005.1, *Interim ICE Use of Force Policy* (July 7, 2004), or as updated, and any successor policies.
2. **Policy.** ICE law enforcement personnel must obtain clear, legible fingerprints. Fingerprinting provides for positive identification of individuals in ICE custody and the collection of necessary evidence to advance the ICE mission. As a general matter, prior to accepting custody of individuals from other ICE or U.S. Department of Homeland Security components, the receiving ICE Directorate or Program Office will verify that necessary fingerprints are included on required documents. When fingerprints are required to establish identity, specifically incident to processing, booking, transfer, and physical removal from the United States, ICE law enforcement personnel are authorized to use only that force which is both necessary and reasonable to obtain fingerprints from noncompliant individuals. In such circumstances, ICE law enforcement personnel must adhere to this Directive to minimize the risk of any potential physical harm to law enforcement personnel, individuals in custody, and any other staff while obtaining fingerprints.
3. **Definitions.** The following definitions apply for purposes of this Directive only.
 - 3.1. **Noncompliant Individual.** An individual in ICE custody who assaults, resists, opposes, prevents, impedes, intimidates, or interferes with ICE law enforcement personnel during the performance of their duties.
4. **Responsibilities.**
 - 4.1. The **Executive Associate Directors (EADs) for Homeland Security Investigations (HSI) and Enforcement and Removal Operations (ERO)**, and the **Associate Director for the Office of Professional Responsibility (OPR)** are responsible for:
 - 1) Ensuring compliance with this Directive within their Directorate or Program Office;

- 2) Resolving any disputes regarding the transfer of individuals between areas of responsibility (AORs); and
- 3) Other than those forms listed under Section 5.1.1., designating additional form(s) for which fingerprints are required to establish identity, such that necessary and reasonable force may be used to obtain fingerprints from noncompliant individuals.

4.2. Special Agents in Charge (SACs) and Field Office Directors (FODs), or their designees, are responsible for:

- 1) Ensuring that individuals are not transferred out of their custody to another SAC or FOD without the necessary fingerprints on required documents as indicated in this Directive, and in no case without being approved in advance by the receiving FOD or SAC; and
- 2) Ensuring that individuals transferred within their AOR will have the necessary fingerprints on required documents as indicated in this Directive, unless approved in advance by the appropriate SAC or FOD.

4.3. Supervisors are responsible for:

- 1) Upon being notified of a noncompliant individual in ICE custody, counseling that individual about his or her obligation to cooperate in the fingerprinting process;
- 2) Ensuring that a sufficient law enforcement presence is available to obtain fingerprints, and providing control and ensuring the safety of the law enforcement personnel, individuals in custody, and any other staff, prior to authorizing an attempt to obtain fingerprints from a noncompliant individual; and
- 3) Remaining present and observing the resulting attempt to obtain fingerprints and, only if necessary, assisting in regaining control of an actively resisting individual.

4.4. ICE Officers and Agents are responsible for:

- 1) Obtaining clear and legible fingerprints on the forms listed in Section 5.1.1;
- 2) Informing noncompliant individuals in ICE custody of their obligation to cooperate in the fingerprinting process;
- 3) Notifying a supervisor of an individual's noncompliance with the fingerprinting process;
- 4) Obtaining supervisory approval prior to the use of necessary and reasonable force to obtain fingerprints;

- 5) Placing the noncompliant individual in appropriate restraints, in accordance with Section 5.2.5, before attempting to obtain fingerprints;
- 6) Seeking medical assistance for any subject who appears or claims to be injured, following a noncompliant fingerprinting use of force; and
- 7) Completing and submitting a SEN/SIR report and an associated Use of Force, Assaults and Discharges (UFAD) report in accordance with reporting requirements in effect at the time of the reportable noncompliant fingerprinting use of force situation.

5. Procedures/Requirements.

5.1. Forms Requiring Fingerprints to Establish Identity.

- 1) Except as provided in Section 5.1.3, necessary and reasonable force may be used to obtain fingerprints from noncompliant individuals on the following forms:
 - a) Form I-205: Warrant of Removal
 - b) Form I-296: Notice to Alien Ordered Removed/Departure Verification
 - c) Form I-385: Alien Booking Record
 - d) Form FD-249: Arrest and Institution Fingerprint Card
 - e) Form R-84: Final Disposition Report
- 2) Fingerprints are not required for the purpose of establishing service of documents on an individual; therefore, force should not be used to obtain fingerprints for this purpose.
- 3) If an EAD designates additional form(s) for which fingerprints are required to establish identity, such that necessary and reasonable force may be used to obtain fingerprints from noncompliant individuals, such designation will be in writing.

5.2. Obtaining Fingerprints from Noncompliant Individuals.

- 1) Once an ICE officer or agent determines that an individual in ICE custody must be fingerprinted, and the individual refuses or fails to cooperate, the officer or agent must inform the individual that he or she is legally required to cooperate in fingerprinting and could face civil or criminal penalties, including, when appropriate, an extension of the removal period, for resisting, impeding, or interfering with the officer's or agent's attempt to obtain fingerprints.
- 2) If the individual continues to refuse to cooperate, a second officer or agent must speak to the individual regarding his or her refusal to submit to fingerprinting and must inform the individual of his or her obligation to comply. Having another officer or agent speak to the noncompliant individual may allow reasonable time for the individual to reconsider his or her refusal to cooperate and may serve to defuse the situation and achieve compliance.

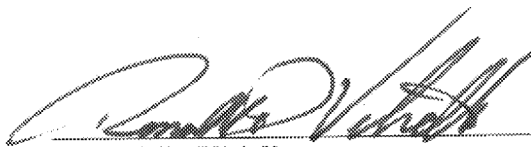
- 3) If the individual continues to refuse to cooperate after being informed by a second officer or agent, the processing officer or agent must notify a supervisor of the individual's failure to comply. A supervisor must then counsel the noncompliant individual and inform the individual of his or her obligation to comply. If the individual continues to refuse to cooperate, the supervisor should then authorize the use of reasonable and necessary force to obtain the fingerprints.
 - 4) The supervisor authorizing such attempt will ensure that a sufficient law enforcement presence is available to provide control and ensure the safety of the law enforcement personnel, individuals in custody, and any other staff, prior to an attempt to obtain fingerprints from a noncompliant individual. The supervisor, with input from the processing officer or agent, will determine the necessary number of officers or agents for the attempt, based on the circumstances, including the level and manner of noncompliance and the characteristics of the noncompliant individual. During all attempts, the supervisor authorizing the use of necessary and reasonable force to obtain fingerprints from a noncompliant individual must be present to observe and supervise.
 - 5) Before attempting to obtain a fingerprint from a noncompliant individual, ICE law enforcement personnel will first place the individual in appropriate restraints, as determined by the supervisor, which will in most circumstances entail placing the individual in leg restraints and securing an individual's hands behind his or her back or to a belly chain with handcuffs. Restraints may be adjusted, as necessary, to obtain legible fingerprints. Individuals who become actively resistant during any part of the fingerprinting process may be returned to confinement until the supervisor determines it is safe to make another attempt. Any officer or agent involved may call for an immediate and temporary halt to the attempt in order to re-evaluate the safety of the situation.
 - 6) Following a noncompliant fingerprinting use of force, law enforcement personnel must seek medical assistance for any subject who appears or claims to be injured.
6. **Recordkeeping.** All incidents requiring a use of force will be reported and documented according to the *Interim ICE Use of Force Policy* (see Section 7.4 below), or as updated.
7. **Authorities/References.**
- 7.1. Immigration and Nationality Act (INA) §§ 241(a)(1)(C); 243; 262(a); 287(f).
 - 7.2. 18 U.S.C. § 2231.
 - 7.3. 8 C.F.R. §§ 264.1; 236.5; 287.8.

7.4. ICE Policy No. 19005.1: *Interim ICE Use of Force Policy* (July 7, 2004), or as updated.

8. **Attachments.**

8.1. *Fingerprinting of Noncompliant Individuals Reference Sheet.*

9. **No Private Right.** This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create or diminish any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.



Ronald D. Vitiello

**Deputy Director and Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement**

Fingerprinting of Noncompliant Individuals Reference Sheet

Step 1– Processing Officer:

- Informed the subject that he or she is legally obligated to cooperate in fingerprinting and may face civil and criminal penalties for resisting, impeding or interfering with the attempt to obtain fingerprints.
- Subject indicated that he or she would not comply with fingerprinting.

Step 2 – Second Officer:

- Informed the subject that he or she is legally obligated to cooperate in fingerprinting and may face civil and criminal penalties for resisting, impeding or interfering with the attempt to obtain fingerprints.
- Subject indicated that he or she would not comply with fingerprinting.

Step 3 – Supervisor:

- Informed the subject that he or she is legally obligated to cooperate in fingerprinting and may face civil and criminal penalties for resisting, impeding or interfering with the attempt to obtain fingerprints.
- Subject indicated that he or she would not comply with fingerprinting.
- Authorized use of necessary and reasonable force to obtain fingerprints.
- Ensured sufficient number of agents or officers to obtain fingerprints from a noncompliant individual.
- Ensured subject transitioned to appropriate restraints by fingerprint team.
- Ensured use of force is reported as prescribed in the *Interim ICE Use of Force Policy*, or as updated.
- Ensured law enforcement personnel sought medical assistance for any subject who appeared or claimed to be injured.