

Office of the Director


U.S. Department of Homeland Security
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Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

APR 04 2016

MEMORANDUM FOR: All ICE Employees

FROM: Daniel Ragsdale 
Deputy Director

SUBJECT: Delegation of General Arrest Authority under Title 19 to
Enforcement and Removal Officers and Participation in
Investigative Task Forces

On March 25, 2016, U.S. Immigration and Customs Enforcement (ICE) Director Sarah R. Saldaña signed ICE Delegation Order No. 002-2016: "*Delegation of Limited Customs Officer Enforcement Authority to Enforcement and Removal Operations*" and an ICE Policy regarding "*Oversight of ICE Personnel Serving on Federal Investigative Task Forces.*" Guided by principles in Secretary Johnson's Memorandum titled "Strengthening Departmental Unity of Effort" and ICE's Strategic Plan 2016-2020, I write to communicate the function of the delegation and policy, provide clarity regarding their scope, and specify how they will be implemented.

A. Purpose

The limited Title 19 delegation ensures that Enforcement and Removal Operations (ERO) officers have authority to act in today's complex immigration enforcement environment. It ensures that ERO's at-large arrests and partnerships with federal, state, and local law enforcement to locate, arrest, and remove priority targets are fully supported by agency's broad range of statutory authority. The Task Force policy ensures that all ERO officers who participate in federal task forces operate in a coordinated manner with oversight by Homeland Security Investigations (HSI) as HSI is ICE's primary program office responsible for investigative activities. This oversight is for purposes of operational and investigative supervision and coordination only; HSI group supervisors will not provide performance ratings or otherwise formally supervise any ERO officers.

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B. Scope and Implementation of the Title 19 Delegation

The Title 19 delegation does not assign new law enforcement responsibilities to the law enforcement officers within Enforcement and Removal Operations (ERO). Similarly, this delegation does not remove law enforcement responsibilities from the law enforcement officers within Homeland Security Investigations. Instead, as described below, this delegation provides ERO officers with a limited, but important, addition to their delegated authority to make arrests for federal felony offenses.

This delegation does not extend to any other authorities afforded to customs officers by statutes or regulations, and the use of this delegated authority by ERO officers must be implemented in a manner that complies with requirements of the Purpose Statute, 31 U.S.C. § 1301(a). ERO's primary mission to identify, apprehend, and remove priority aliens from the United States remains unchanged.

While ERO's mission and day-to-day responsibilities remain unchanged, this delegation will assist ERO in responding to challenges to its exercise of federal criminal arrest authority. In sum, with this delegated authority, ERO officer's authority to make warrantless arrests for offenses against the United States committed in their presence and federal felonies committed outside their presence, will no longer be exclusively limited to circumstances where they are simultaneously performing enforcement of immigration laws and where there is likelihood of the person escaping before a warrant can be obtained. Nevertheless, ERO officers will be engaged in duties reasonably related to their immigration enforcement mission.

C. Applicable Statutes

Section 287 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1357, sets forth the powers of immigration officers. An immigration officer or agent is authorized to make arrests for an offense against the United States if the offense is committed in the officer's presence, or for a felony cognizable under the laws of the United States if the officer has reasonable grounds to believe the person to be arrested has committed or is committing such a felony, if the officer is performing duties related to the enforcement of immigration laws at the time of the arrest, and there is a likelihood of the person escaping before a warrant could be obtained. INA § 287(a)(5); 8 U.S.C. § 1357(a)(5). Notably, the authority for an immigration officer to make arrests committed outside the officer's presence is expressly limited to circumstances in which the officer is performing duties relating to the enforcement of the immigration laws at the time of the arrest. *Id.*

Under 19 U.S.C. § 1589a, customs officers possess the same authorities addressed above. But the authority of customs officers to make warrantless arrests for offenses against the United States committed in the customs officer's presence, or for a felony cognizable under the law of the United States, where there is reasonable grounds to believe the individual committed or is committing the offense is not constrained to circumstances in which the officer is performing duties relating to the enforcement of the customs laws at the time of the arrest, nor does that statute require that there be a likelihood of the person escaping before a warrant can be obtained.

D. Training

Each ERO officer must attend training provided by the Office of the Principal Legal Advisor on this delegation and may not exercise authority under this delegation until that training is complete and his or her attendance at the training is recorded.

E. Scope and Implementation of the Task Force Policy

As noted above, today's complex immigration enforcement environment requires ERO officers to deepen their partnerships and collaboration with law enforcement programs within ICE, within the Department of Homeland Security, and with State and local partners. While this collaboration serves as a force multiplier for ERO to identify, arrest, and remove priority aliens, participation in federal investigative task forces requires careful oversight and deconfliction. Accordingly, to ensure ICE's investigative efforts are fully coordinated, ERO task force officers will conduct operational activities under the guidance and approval of HSI group supervisors as set forth in paragraph 5 of the policy. I am confident this policy will lead to increased innovation, successful law enforcement results, and bolster collaboration between all ICE law enforcement officers.

F. No Private Right of Action

These guidelines are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.