

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ICE Policy System

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**DIRECTIVE TITLE: STATE PERSONNEL DESIGNATED TO ACT AS
IMMIGRATION OFFICERS FOR IMMIGRATION
ENFORCEMENT PURPOSES**

1. **PURPOSE and SCOPE.** To provide comprehensive guidelines regarding the designation of state and local law enforcement officers to perform the duties of an Immigration Officer for immigration enforcement purposes when the designation is in the best interest of the U.S. Immigration and Customs Enforcement (ICE). This Directive does not grant the Designated Immigration Officers the authority to enforce any laws and regulations previously enforced by the former U.S. Customs Service (USCS).
2. **AUTHORITIES/REFERENCES.**
 - 2.1. Immigration and Nationality Act (INA) Section 287(g), 8 United States Code (U.S.C.) Section 1357(g).
 - 2.2. 8 Code of Federal Regulations (CFR) Part 287, Field Officers; Powers and Duties.
3. **SUPERSEDED/CANCELLED POLICY/SUMMARY OF CHANGES.** This Directive is the originating and establishing directive pertaining to the designation of state and local law enforcement officers to perform the duties of an Immigration Officer for immigration enforcement purposes. All other legacy policies pertaining to the designation of state and local law enforcement officers to perform the duties of an immigration officer for immigration enforcement purposes are hereby superseded.
4. **BACKGROUND.** The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), effective September 30, 1996, added Section 287(g) to the Immigration and Nationality Act (INA). Section 287(g) authorizes the Secretary of the U.S. Department of Homeland Security (DHS), acting through the Assistant Secretary of ICE, to enter into agreements with state and local law enforcement agencies that would permit designated officers to perform immigration law enforcement functions, provided that these officers receive appropriate training from ICE and function under the supervision of sworn ICE officers.

5. **DEFINITIONS.** The following definitions are provided only for the purposes of this Directive.
- 5.1 **Designated Immigration Officer.** Any person designated by the Secretary of DHS, pursuant to Section 287(g) of the INA, who is authorized to perform specified law enforcement functions of an immigration officer.
- 5.2. **Field Responsible Officials.** ICE officials responsible for directing and supervising assigned Designated Immigration Officers within their area of responsibility at ICE field locations. These officials include: all Special Agents in Charge (Office of Investigations), Field Office Directors (Detention and Removal Operations), and any other officials who have been designated, in writing, by the ICE Assistant Secretary.
6. **POLICY.**
- 6.1. Pursuant to Section 287(g) of the INA, ICE may, as needed, designate law enforcement personnel from state and local agencies to serve as Designated Immigration Officers. Before any law enforcement officers may be authorized to serve as Designated Immigration Officers, their respective agencies shall execute a Memorandum of Agreement (MOA) with ICE outlining the obligations of each party and the duties that their officers will be authorized to perform.
- 6.2. ICE shall appoint only full-time domestic state and local law enforcement officers as Designated Immigration Officers. These designated officers will be authorized to perform certain specified law enforcement duties of an ICE Immigration Officer and will have the authority to enforce immigration laws.
- 6.3. ICE Program Office Directors, or their designees, with approval by an OSLC designated official may limit the scope of Designated Immigration Officers' authority and activities within their particular area of responsibility.
- 6.4. Domestic state and local law enforcement officers shall be officially recognized as Designated Immigration Officers by ICE only after undergoing a background check, receiving formal standardized training (see Section 8.3), and obtaining a passing score of 70 percent on all required standardized tests.
- 6.5. Authorized designations shall be documented in writing using the "Designation, Immigration Officer" form (attached, for the purposes of this Directive the "Designation, Immigration Officer" form will simply be referred to as the "Designation Form"). The use of any other form, letter, or prior edition of the Designation Form is strictly prohibited.
- 6.6. The Designation Form shall be used to indicate which specific duties a Designated Immigration Officer is authorized to perform as well as any and all specific endorsements or restrictions (see section 10 of the Attachment). Designated Immigration Officers are

strictly prohibited from exercising any authority that has not been coordinated and approved in advance and indicated on their Designation Form.

- 6.7 A Designated Immigration Officer may be authorized to perform a function of an Immigration Officer in relation to the investigation, apprehension, or detention of aliens in the United States, including any of the following duties:
- 1) Use of firearms and other ICE approved weapons in accordance with the ICE Directive relating to Use of Force. Carriage of firearms will be in accordance with the officer's employing agency.
 - 2) The power and authority to interrogate any person believed to be an alien as to his or her right to be or remain in the United States (INA § 287(a)(1) and 8 C.F.R. § 287.5(a)(1)) and to arrest any removable alien identified pursuant to a lawful stop.
 - 3) Arrest without warrant for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, expulsion, or removal of aliens, if he has reason to believe that the person so arrested is guilty of such felony and if there is likelihood of the person escaping before a warrant can be obtained for his arrest. (INA § 287(a)(4) and 8 C.F.R. § 287.5(c)(2)). Arrested individuals must be presented to a federal magistrate judge or other authorized official without unnecessary delay. (INA § 287(a)(4); Fed. R. Crim. P. 5). Notification of such arrest must be made to ICE within twenty-four (24) hours.
 - 4) Serve warrants of arrest for immigration violations pursuant to 8 C.F.R. § 287.5(e)(3).
 - 5) Administer oaths and take and consider evidence (INA § 287(b) and 8 C.F.R. § 287.5(a)(2)), complete required criminal alien processing, including fingerprinting, photographing, and interviewing of aliens, as well as the preparation of affidavits and the taking of sworn statements for ICE supervisory review.
 - 6) Prepare charging documents (INA § 239, 8 C.F.R. § 239.1; INA § 238, 8 C.F.R. § 238.1; INA § 241(a)(5), 8 C.F.R. § 241.8; and INA § 235(b)(1), 8 C.F.R. § 235.3) including the preparation of a Notice to Appear application or other charging document, as appropriate, for the signature of an ICE officer for aliens in categories established by ICE supervisors.
 - 7) Issue immigration detainers (8 C.F.R. § 287.7) and I-213, Record of Deportable/Inadmissible Alien, for processing aliens in categories established by ICE supervisors.
 - 8) Detain and transport arrested aliens to ICE-approved detention facilities (8 C.F.R. § 287.5(e)(6)).

- 9) Other specific duties as agreed to and specified in the Designation Form.
- 6.8. All Designated Immigration Officers shall receive a copy of their signed Designation Form specifically detailing the duties they are authorized to perform.
- 6.9. Designations of domestic officers to serve as Designated Immigration Officers will be valid until the termination of the MOA. Designations may be revoked by the ICE Program Office Director, or his or her designee, at any time. If a Designated Immigration Officer permanently transfers outside the area where his or her designation was originally issued the designation will be revoked. Further, a designation shall be automatically revoked if a Designated Immigration Officer is separated from his or her agency. ICE will review authorizations of individual Designated Immigration Officers annually.
- 6.10. All Designated Immigration Officers shall be issued Immigration Officer Identification. The Immigration Officer Identification shall be issued by the Office of State and Local Coordination (OSLC) and collected by the OSLC upon the completion, revocation, or expiration of the Designated Immigration Officer's service. All Immigration Officer Identification shall be identified by a unique control number and inventoried by the OSLC.
- 6.11. OSLC shall conduct an annual review and inventory of all Immigration Officer Identifications and Designation Forms it has issued. Program Office Directors, or their designees, shall notify OSLC if any changes are required to information on an Immigration Officer's Identification or Designation Form.

7. RESPONSIBILITIES.

- 7.1. The Assistant Secretary, or his or her designee, shall be responsible for executing MOAs with participating law enforcement agencies outlining the ICE duties that Designated Immigration Officers will be authorized to perform.
- 7.2. OSLC is responsible for:
- 1) Management oversight over the 287(g) delegation of authority program within ICE;
 - 2) Developing any required guidance and procedures relating to the 287(g) program;
 - 3) Working in conjunction with the ICE Office of Professional Responsibility (OPR) to ensure that a suitability-screening investigation has been conducted on all potential Designated Immigration Officers prior to their certification;
 - 4) Maintaining oversight of a national database containing information on all Designated Immigration Officers delegated authority under section 287(g);
 - 5) Issuing Immigration Officer Identifications and Designation Forms and tracking, reviewing and inventorying these items on an annual basis; and

- 6) Maintaining a permanent record of all revoked or retired Designation Forms.
- 7.3. OPR, working in coordination with OSLC, is responsible for conducting suitability-screening investigations on all potential Designated Immigration Officers prior to their certification.
- 7.4. Field Responsible Officials are responsible for:
 - 1) Directing and supervising assigned Designated Immigration Officers during the performance of their duties while acting pursuant to their designated authority; and
 - 2) Collecting and ensuring the return to OSLC all Immigration Officer Identifications from Designated Immigration Officers if their authorization is revoked or expires, the officer separates from their agency, or if the officer is permanently transferred outside of the area where their designation was initially issued.

8. PROCEDURES.

- 8.1. When a State or local law enforcement agency is approved by ICE to participate in the 287(g) delegation of authority program, the Assistant Secretary, or his or her designee, shall execute an MOA with the participating agency outlining the ICE duties that the Designated Immigration Officers will be authorized to perform.
- 8.2. Once the MOA has been executed, the participating agency will submit a list of qualified candidates for designation to OSLC. These candidates shall then be subject to a background check conducted by OPR in conjunction with OSLC.
- 8.3. Upon successful completion of a background check, candidates shall be required to undergo formal standardized training. Training shall cover, but is not limited to, the following areas:
 - 1) Discussion of the terms and limitations of the MOA;
 - 2) The scope of an Immigration Officer's authority;
 - 3) Relevant immigration laws;
 - 4) The ICE directive relating to the Use of Force;
 - 5) Civil Rights laws;
 - 6) The U.S. Department of Justice "Guidance Regarding the Use Of Race By Federal Law Enforcement Agencies," dated June 2003;
 - 7) Public outreach and complaint procedures;

- 8) Liability issues;
 - 9) Cross-cultural issues; and
 - 10) The obligation under federal law and the Vienna Convention on Consular Relations to make proper notification upon the arrest or detention of a foreign national.
- 8.4. Upon successful completion of the training and after obtaining a passing score of 70 percent on the required standardized tests, Designated Immigration Officers shall receive a Certificate of Completion from the authorizing ICE Office of Training and Development (OTD), be issued their Immigration Officer Identification, and have their designation form completed and signed by the appropriate Field Responsible Official. All written tests and results will be maintained by OTD for the duration of the designation.
 - 8.5. Before a Designation Form shall be issued, any officers required by their departments to carry firearms shall be required to provide certification that they have received and successfully completed formal firearms qualification from their employing agency within the previous 12 months. Designated Immigration Officers shall be required to qualify with their agency-issued firearm a minimum of one time during each 12-month period and provide certification of this qualification to the field responsible official.
 - 8.6. Once the Designation Form is completed and signed by all required parties, it shall be sent to OSLC which shall file the original form and send one copy to the Designated Immigration Officer, and one copy to the Officer's employing agency.
 - 8.7. If a Designated Immigration Officer's authority is cancelled, revoked, expires, or the officer separates from his or agency, the ICE field office shall retrieve the individual's Immigration Officer Identification and return it to the Program Office Director, or his or her designee. The Program Office Director, or his or her designee, shall attach the cancelled Immigration Officer Identification to the Officer's corresponding Designation Form, and appropriately annotate the Designation Form to denote cancellation of the authority and the reason for the cancellation. The Program Office Director, or his or her designee, shall then send the cancelled Immigration Officer Identification and the Designation Form to OSLC to be kept as a permanent record.
 - 8.8. A participating law enforcement agency shall immediately report the loss or theft of any Immigration Officer Identification to OSLC. OSLC shall immediately report the loss to OPR. OSLC will initiate a National Crime Information Center entry by contacting the National Law Enforcement Communications Center and providing all information necessary to create a lost/stolen credential entry.
 - 8.9. Prior to commencement of their duties, the Program Office Director, or his or her designee, shall advise Designated Immigration Officers that misuse or abuse of the authorities conveyed by their designation and identification may result in the immediate

withdrawal of the authority and may subject them to administrative, criminal, or civil actions.

8.10. At any time after Designated Immigration Officers have been trained and certified, ICE may provide additional updated training on relevant administrative, legal, and operational issues related to the performance of immigration officer functions, unless either party terminates the MOA. ICE supervisors or a designated team leader shall provide local training on relevant issues on an ongoing basis as needed. An OSLC designated official shall, in consultation with the Office of Training and Development and local ICE officials, review on an annual basis, and if needed, refresh training requirements.

9. **ATTACHMENT.** ICE Immigration Officer Designation Form.

10. **NO PRIVATE RIGHT STATEMENT.** This Directive is an internal policy statement of ICE. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.

Approved

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Acting Assistant Secretary
U.S. Immigration and Customs Enforcement