

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

13002.1: Review, Suspension, and Termination of 287(g) Memoranda of Agreement

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Superseded: This Directive is the originating and establishing directive regarding the review, suspension, and termination of 287(g) Memoranda of Agreement.

Federal Enterprise Architecture Number: 306-112-002b

1. **Purpose/Background.** The Secretary of the U.S. Department of Homeland Security (DHS) delegated to the Director of U.S. Immigration and Customs Enforcement (ICE) the authority under Section 287(g) of the Immigration and Nationality Act (INA) to enter into a Memorandum of Agreement (MOA) with a state or local law enforcement agency (LEA) permitting designated LEA officers to perform specified immigration law enforcement functions. ICE provides these Designated Immigration Officers with appropriate training and oversight. The purpose of this collaboration is to enhance the safety and security of communities by focusing resources primarily on identifying and processing for removal criminal aliens who pose a threat to public safety or a danger to the community. This Directive provides ICE policy and procedures for reviewing, suspending, and terminating 287(g) MOAs.
2. **Policy.** 287(g) MOAs may be reviewed at any time at the discretion of ICE to determine whether the partnerships are in the best interests of ICE to maintain. ICE will afford fair, impartial, and equitable treatment to all LEAs during the review process for 287(g) MOAs; however, ICE reserves the right in each 287(g) MOA to unilaterally suspend or terminate the MOA. ICE may consider any of the following conditions or criteria as a basis for suspending or terminating an MOA:
 - 1) Credible allegations of misconduct, negligence, discrimination on account of race or ethnicity, or other civil rights violations (e.g., unlawful use of force, unlawful deprivation of liberty, failure to provide appropriate interpretation and translation, or inappropriate conditions of detention) by officers of a participating LEA;
 - 2) Failure to cooperate in the investigation of these issues by the DHS Office for Civil Rights and Civil Liberties (CRCL) or any other federal agency, including providing and granting access to information needed to conduct such investigations;
 - 3) Reprisal or threat of reprisal against a complainant or witness for making a complaint or for disclosing any information to CRCL or any other federal agency in the course of an investigation;

- 4) Number of Designated Immigration Officers actually participating in 287(g)-related activities;
- 5) Use of 287(g) authority by the participating LEA;
- 6) Support of ICE's overall mission, objectives, and priorities, including ICE priorities for the apprehension, detention, and removal of aliens;
- 7) Type and level of criminal activity occurring in the LEA's area of responsibility;
- 8) Whether the costs to ICE associated with the MOA are justified by the LEA's engagement in immigration law enforcement activities that achieve ICE goals, priorities, and objectives;
- 9) Whether the LEA meets security requirements provided under the Federal Information Security Management Act of 2002 for properly protecting DHS/ICE sensitive information or otherwise complying with DHS policy regarding the handling and safeguarding of such information;
- 10) Failure to follow ICE policy, guidelines, and procedures;
- 11) Failure to abide by the terms of the MOA; or
- 12) Any other factor deemed appropriate by ICE.

3. Definitions. The following definitions apply for purposes of this Directive only:

- 3.1. 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 under the terms of an MOA with ICE.
- 3.2. Field Responsible Officials.** ICE officials responsible for oversight of assigned Designated Immigration Officers within their area of responsibility at ICE field locations. These officials include Special Agents in Charge, Field Office Directors, and any other supervisory position that has been delegated this authority.
- 3.3. ICE Information Technology (IT) Equipment.** The ICE-owned hardware and software IT equipment provided to the LEA to enable its Designated Immigration Officers to perform the specified law enforcement functions of an immigration officer.
- 3.4. ICE IT Systems Access.** The ICE network access provided to the LEA to enable its Designated Immigration Officers to perform the specified law enforcement functions of an immigration officer.

- 3.5. Law Enforcement Agency (LEA).** A state or local law enforcement entity that is signatory to an MOA with ICE under the 287(g) program.
- 3.6. Memorandum of Agreement (MOA).** The document signed by the authorizing officials of ICE and the LEA that sets forth the terms under which ICE grants 287(g) authority to the LEA and its Designated Immigration Officers.
- 3.7. Suspension of an MOA.** The temporary removal of the 287(g) authority granted to an LEA and its Designated Immigration Officers and suspension of their ICE IT systems access.
- 3.8. Termination of an MOA.** The elimination of the 287(g) authority granted to an LEA and its Designated Immigration Officers and their ICE IT systems access, and the removal of all ICE IT equipment.
- 4. Responsibilities.**
- 4.1. The Director of ICE, or his or her designee,** has overall authority and responsibility for entering into, suspending, or terminating an MOA.
- 4.2. The Executive Associate Director for Enforcement and Removal Operations (ERO), or his or her designee,** is responsible for:
- 1) The direction of the 287(g) program, including management oversight and coordination among the 287(g) Unit, ICE Field Responsible Officials, and state and local LEAs; and
 - 2) Monitoring MOAs and notifying the Field Responsible Officials when ICE decides to review a particular MOA.
- 4.3. The 287(g) Unit** is responsible for making recommendations through the Executive Associate Director of ERO, in consultation with Homeland Security Investigations when appropriate, to the Director regarding whether an MOA should be suspended or terminated.
- 4.4. 287(g) Program Managers** are responsible for:
- 1) Reviewing suspension and revocation recommendations from Field Responsible Officials and determining whether to suspend or revoke the authority of the LEA's Designated Immigration Officers covered under the MOA, in accordance with ICE Directive 13003.1, titled "Suspension or Revocation of a Designated Immigration Officer's 287(g) Authority;" and
 - 2) Coordinating with the Office of Professional Responsibility (OPR) to disable ICE IT systems access for the LEA's Designated Immigration Officers when their 287(g) authority is suspended or revoked.

4.5. Field Responsible Officials are responsible for:

- 1) Monitoring and evaluating whether any suspension or termination criteria applies to the MOA;
- 2) Discussing with the LEA any concerns raised during an MOA review; and
- 3) Suspending or revoking, after receipt of the 287(g) Unit's decision, the authority of the LEA's Designated Immigration Officers covered under the MOA in accordance with ICE Directive 13003.1, titled "Suspension or Revocation of a Designated Immigration Officer's 287(g) Authority."

4.6. The Office of the Chief Information Officer (OCIO) is responsible for coordinating removal of ICE IT equipment from an LEA following a decision to terminate a 287(g) MOA.

4.7. OPR is responsible for coordinating with the 287(g) Unit to disable ICE IT systems access for the LEA's Designated Immigration Officers when their 287(g) authority is suspended or revoked.

5. Procedures.

5.1. The 287(g) Unit and the Field Responsible Officials shall conduct reviews of each MOA to determine if the LEA is using its 287(g) authority in accordance with ICE's priorities. Review of each 287(g) MOA shall be initiated 6 months prior to the MOA's expiration and completed prior to expiration; however, ICE may review an MOA at any time.

5.2. 287(g) Program Managers will notify the LEA through its Field Responsible Officials that an MOA is under review within 5 working days of initiating the review.

5.3. Upon receipt of notification from the 287(g) Program Manager, the Field Responsible Officials shall meet with the LEA to discuss any specific concerns raised by ICE, if any. The Field Responsible Officials shall address the areas of concern identified, if any, and discuss possible remedies that can be implemented by the LEA. The Field Responsible Officials will provide a written report to the 287(g) Unit on the communications, including the areas of concerns identified and remedies discussed, with a recommendation on whether or not to terminate or suspend the agreement.

5.4. The 287(g) Unit will review the report from the Field Responsible Officials to determine if the remedies proposed are acceptable based on any areas of concern.

- 1) If the 287(g) Unit determines that either the remedies proposed by the Field Responsible Official or other remedies are appropriate, ICE may inform the LEA that it has 90 days to implement changes addressing the concerns raised and/or to demonstrate a continued need for the MOA before the agreement is suspended or

terminated in accordance with the provisions of the MOA; however, ICE reserves the right to immediately suspend or terminate an MOA if the circumstances warrant.

- 2) If the 287(g) Unit determines that no remedy addressing the specific concerns raised by ICE can be mutually agreed upon, the 287(g) Unit will coordinate with OPR to suspend all ICE IT systems access provided to the LEA's Designated Immigration Officers under the MOA in accordance with ICE Directive 1-3.0, titled "ICE Screening Criteria for Federal, State, or Local Law Enforcement, Correctional, and Mission Support Personnel Supporting ICE Programs." The 287(g) Unit will also notify the LEA and the Field Responsible Officials in writing that ICE has suspended all of the authorities granted to the LEA's Designated Immigration Officers under the MOA.
 - 3) The Executive Associate Director of ERO, or his or her designee, will notify the Director of the decision to suspend all ICE IT systems access provided to the LEA's Designated Immigration Officers and all authorities granted to the LEA's Designated Immigration Officers under the MOA.
 - 4) The Executive Associate Director of ERO, or his or her designee, will advise the Director whether to (1) terminate the MOA with the LEA, (2) suspend the MOA itself, or (3) continue to suspend its Designated Immigration Officers' ICE IT systems access for a prescribed time to allow for the opportunity to remedy any concerns or initiate any other solutions. The Director, or his or her designee, will decide whether to (1) terminate the MOA with the LEA, (2) suspend the MOA itself, or (3) continue to suspend its Designated Immigration Officers' ICE IT systems access for a prescribed time.
 - 5) Suspension of the ICE IT systems access provided to the LEA's Designated Immigration Officers and all authorities granted to the LEA's Designated Immigration Officers under the MOA will continue until the final decision of the Director, or his or her designee.
- 5.5. Upon a decision by the Director, or his or her designee, to suspend or terminate an MOA:
- 1) ICE will prepare and deliver a written notification to the LEA informing them of the suspension or termination of the MOA and the authority of its Designated Immigration Officers. The 287(g) Unit will also inform the Field Responsible Officials of the Director's decision.
 - 2) The Field Responsible Officials will carry out suspension or revocation of the authority of the LEA's Designated Immigration Officers covered under the MOA in accordance with ICE Directive 13003.1, titled "Suspension or Revocation of a Designated Immigration Officer's 287(g) Authority."

- 5.6. During suspension of an MOA, any ICE IT equipment used by the LEA may remain with the LEA, but ICE IT systems access will remain suspended; however, ICE reserves the right to remove any ICE equipment upon suspension of the MOA.
- 5.7. ICE will advise the LEA that the LEA may, verbally or in writing, inform ICE of any steps it has taken to address the factors that caused the LEA's suspension. If ICE agrees to reinstate an MOA with a particular LEA, its Designated Immigration Officers' ICE IT systems access will be reestablished.
- 5.8. Upon a decision by the Director, or his or her designee, to terminate an MOA, the 287(g) Unit will coordinate with OCIO to recover any ICE IT equipment.
- 5.9. ICE will advise the LEA that the LEA may, in writing, inform ICE of the steps taken by the LEA to address the factors causing the LEA's termination. If ICE agrees to reinstate an agreement with a particular LEA and both parties re-sign an MOA, the 287(g) Unit will coordinate with OCIO to reinstall and/or reactivate the ICE IT equipment.

6. Authorities/References.

- 6.1. Immigration and Nationality Act (INA) Section 287(g), 8 United States Code (U.S.C.) Section 1357(g).
- 6.2. 8 Code of Federal Regulations (C.F.R.) Part 287, Field Officers; Powers and Duties.
- 6.3. Federal Information Security Management Act of 2002, 44 U.S.C. Section 3541 et. seq., Public Law Number 107-347, Sections 301-305.
- 6.4. DHS Management Directive 140-01, "Information Technology Systems Security" (July 31, 2007).
- 6.5. DHS Sensitive Systems Policy Directive 4300A, Version 8.0 (March 14, 2011).
- 6.6. DHS Delegation Order 7402, "Delegation of Authority for Performance of Immigration Officer Functions by State Officers and Employees" (September 9, 2009).
- 6.7. ICE Delegation Order 13001.1, "Delegation of Authority for Performance of Immigration Officer Functions by State Officers and Employees" (March 24, 2011).
- 6.8. ICE Directive 1-3.0, "ICE Screening Criteria for Federal, State, or Local Law Enforcement, Correctional, and Mission Support Personnel Supporting ICE Programs" (October 18, 2007).
- 6.9. ICE Directive 13001.1 (formerly Directive 7-7.1), "State Personnel Designated to Act as Immigration Officers for Immigration Enforcement Purposes" (December 4, 2008).

- 6.10. ICE Directive 13003.1, "Suspension or Revocation of a Designated Immigration Officer's 287(g) Authority."
- 6.11. ICE Directive, 13004.1, "Annual Verification of Designated Immigration Officers' Recertification of Delegated 287(g) Authority."
7. **Attachments.** None.
8. **No Private Right.** 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.



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U.S. Immigration and Customs Enforcement