

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

13003.1: Suspension or Revocation of a Designated Immigration Officer's 287(g) Authority

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Superseded: The ICE Office of Investigations Memorandum titled "Clarification of 287(g) Delegation of Authority," dated April 2, 2007, is hereby superseded, as are all other policies issued on this subject prior to the effective date of this Directive.

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. While each MOA is specific to the LEA, all of the 287(g) MOAs state that ICE authorization of LEA personnel as Designated Immigration Officers may be revoked by ICE at any time. This Directive provides ICE policy and procedures for suspending or revoking a Designated Immigration Officer's authority to perform immigration law enforcement functions.
- 2. Policy.** ICE will afford fair, impartial, and equitable treatment to all Designated Immigration Officers; however, ICE reserves the right in each 287(g) MOA to unilaterally suspend or terminate the MOA or to suspend or revoke any Designated Immigration Officer's 287(g) authority at any time. ICE may suspend a Designated Immigration Officer's authority while determining the existence of any grounds for revocation; however, a Designated Immigration Officer's authority need not be suspended before it can be revoked.

Any of the following conditions or criteria may be grounds for suspending or revoking the authority to perform immigration law enforcement functions as a Designated Immigration Officer:

- 1) Credible allegations of 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);

- 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) Misconduct or negligence in employment;
- 5) Criminal or dishonest conduct;
- 6) Temporary reassignment or administrative leave due to a pending investigation;
- 7) Material and/or intentional false statement, or deception or fraud in examination or appointment;
- 8) Refusal to furnish testimony;
- 9) Alcohol abuse of a nature and duration that suggests that the Designated Immigration Officer would be prevented from performing the duties of the position in question, or would constitute a direct threat to the property or safety of others;
- 10) Illegal use of narcotics, drugs, or other controlled substances;
- 11) Knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by force;
- 12) Any statutory or regulatory bar that prevents ICE information technology (IT) systems access by the Designated Immigration Officer;
- 13) Separation of the Designated Immigration Officer from his or her agency;
- 14) Reassignment of the Designated Immigration Officer by the LEA to duties not conducive to the exercise of 287(g) authority;
- 15) Exercising the 287(g) authority inconsistent with ICE priorities or otherwise outside the scope of the MOA;
- 16) Lack of use of the 287(g) authority over an extended period of time;
- 17) Termination of the MOA by the LEA or ICE;
- 18) Failure to complete the requirements for recertification of 287(g) authority in accordance with ICE Directive 13004.1, titled "Annual Verification of Designated Immigration Officers' Recertification of Delegated 287(g) Authority;"

19) Any actual or alleged conduct or condition that may reflect negatively on ICE or that creates an appearance of impropriety or a conflict of interest as determined by ICE; or

20) 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 as 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 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.

3.4. Law Enforcement Agency (LEA). A state or local law enforcement entity that is signatory to an MOA with ICE under the 287(g) program.

3.5. 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.

3.6. Revocation of Authority. The termination of the 287(g) authority granted to a Designated Immigration Officer under the MOA and that individual Designated Immigration Officer's ICE IT systems access.

3.7. Suspension of Authority. The temporary removal of the 287(g) authority granted to a Designated Immigration Officer under the MOA and suspension of that individual Designated Immigration Officer's ICE IT systems access.

4. Responsibilities.

4.1. The Executive Associate Director of Enforcement and Removal Operations (ERO), or his or her designee, is responsible for 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.

4.2. 287(g) Program Managers are responsible for:

- 1) The management of the 287(g) program, including oversight and coordination among ICE Field Responsible Officials and state and local LEAs;
- 2) Reviewing suspension and revocation recommendations from the Field Responsible Officials and determining whether to suspend or revoke a Designated Immigration Officer's authority, in consultation with the Field Responsible Officials and the Executive Associate Directors of ERO and Homeland Security Investigations (HSI), or their designees, as necessary and appropriate;
- 3) Notifying the Field Responsible Officials and the Office of Professional Responsibility (OPR) as soon as practicable if any suspension or revocation criteria apply to a Designated Immigration Officer;
- 4) Compiling and maintaining records of suspension and revocation notices submitted by Field Responsible Officials, and notifying OPR of the suspension or revocation of a Designated Immigration Officer's authority; and
- 5) Coordinating with OPR to disable ICE IT systems access for Designated Immigration Officers who have had their 287(g) authority suspended or revoked.

4.3. Field Responsible Officials are responsible for:

- 1) Monitoring and evaluating whether any suspension or revocation criteria applies to a Designated Immigration Officer;
- 2) Providing notification as soon as practicable to the 287(g) Unit of the applicability of any suspension or revocation criteria related to a Designated Immigration Officer, and a recommendation as to whether a suspension or revocation is appropriate;
- 3) Suspending or revoking, after receipt of the 287(g) Unit's decision, a Designated Immigration Officer's authority to perform immigration law enforcement functions;
- 4) Providing written notification of the suspension or revocation to the Designated Immigration Officer, the employing LEA, and the 287(g) Unit, and recording the date and time of service of the notice upon the Designated Immigration Officer; and
- 5) Retrieving any ICE-issued property, such as identification or credentials, from Designated Immigration Officers who have had their 287(g) authority suspended or revoked, and returning it to the 287(g) Unit.

4.4. OPR is responsible for:

- 1) Notifying ERO, HSI, and the 287(g) Unit as soon as practicable if OPR discovers any grounds for suspension or revocation of a Designated Immigration Officer's authority; and

- 2) Coordinating with the 287(g) Unit to disable ICE IT systems access for Designated Immigration Officers who have had their 287(g) authority suspended or revoked.

5. Procedures.

- 5.1. Both Field Responsible Officials and the 287(g) Unit shall conduct reviews of Designated Immigration Officers as appropriate. Upon receipt of information indicating the existence of any of the conditions or criteria listed in Section 2 of this Directive, the Field Responsible Officials shall review and confirm the information and, if confirmed, notify the 287(g) Unit as soon as practicable, through the chain of command in writing, and including information that substantiates the basis for a suspension or revocation. Field Responsible Officials may recommend immediate suspension of the Designated Immigration Officer's authority while revocation is being considered. The 287(g) Unit will then notify OPR of the existence of the suspension or revocation criteria.
- 5.2. The 287(g) Unit shall review the information and, as necessary and appropriate, consult with the Field Responsible Officials and the Executive Associate Directors of ERO and HSI, or their designees, to make a determination. The 287(g) Unit shall document its decision regarding the suspension or revocation of a Designated Immigration Officer's 287(g) authority in writing, and send notification of the decision to the Field Responsible Officials and to OPR. The 287(g) Unit shall maintain a record of all suspension and revocation decisions.
- 5.3. Upon notification that a Designated Immigration Officer's 287(g) authority has been suspended or revoked, OPR and the 287(g) Unit shall disable the Designated Immigration Officer's ICE IT systems access as appropriate 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." OPR shall confirm with the 287(g) Unit that the Designated Immigration Officer's ICE IT Systems Access has been disabled.
- 5.4. Upon receipt of the 287(g) Unit's decision regarding suspension or revocation, the Field Responsible Officials will notify the LEA and the Designated Immigration Officer of the decision. If the decision is to suspend or revoke the Designated Immigration Officer's 287(g) authority, the Field Responsible Officials will record the decision in writing, including the time and date of service upon the Designated Immigration Officer. The Field Responsible Officials shall collect any ICE-issued property, including identification and credentials (e.g., ICE badges) from the Designated Immigration Officer upon notice of the suspension or revocation.
- 5.5. The Field Responsible Officials will send a physical copy of the suspension or revocation notice, along with all retrieved ICE-issued property, to the 287(g) Unit. The 287(g) Unit will keep records of all suspension and revocation notices and will place a copy of the notice in the appropriate LEA's credential file.

5.6. The 287(g) Unit's decision to reinstate a suspended Designated Immigration Officer's 287(g) authority shall be documented in writing. The 287(g) Unit will coordinate with OPR to reinstate the Designated Immigration Officer's ICE IT systems access.

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. DHS Delegation Order 7402, "Delegation of Authority for Performance of Immigration Officer Functions by State Officers and Employees" (September 9, 2009).

6.4. ICE Delegation Order 13001.1, "Delegation of Authority for Performance of Immigration Officer Functions by State Officers and Employees" (March 24, 2011).

6.5. 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).

6.6. ICE Directive 13001.1 (formerly Directive 7-7.1), "State Personnel Designated to Act as Immigration Officers for Immigration Enforcement Purposes" (December 4, 2008).

6.7. ICE Directive 13002.1, "Review, Suspension, and Termination of 287(g) Memoranda of Agreement."

6.8. 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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