



U.S. Immigration
and Customs
Enforcement

DEC - 5 2011

MEMORANDUM FOR: Field Office Directors
THROUGH: Gary Mead *G. Mead*
Executive Associate Director
SUBJECT: Re-Delegation of Authorities to GS-14 Non-Supervisory 287(g)
Field Program Managers

Purpose

This memorandum serves to provide formal re-delegation of authorities from the Office of Enforcement and Removal Operations (ERO) Executive Associate Director (EAD) to GS-14 non-supervisory 287(g) field program managers (PMs). This re-delegation will provide 287(g) PMs with signatory authority to issue Notices to Appear (NTA) and Notices of Intent to Administratively Remove. This memorandum is necessary to ensure that immigration judges recognize 287(g) PMs' authority to issue NTAs.

Background

ERO 287(g) PMs have direct oversight of the 287(g) program and build awareness and understanding of ICE programs available for Federal, State, and local law enforcement agencies (LEAs). 287(g) PMs coordinate and assist in the establishment of ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS) partnerships with State and Local LEAs. 287(g) PMs are responsible for analyzing all incoming requests for information, conducting research using various applications and resources, assigning requests for information to the appropriate ICE program offices for review, reviewing and consolidating all incoming responses and formulating the ICE response.

287(g) PMs are responsible for planning, directing, and controlling the 287(g) program within the assigned area of responsibility and coordinating the establishment of goals, objectives, and long-range plans. 287(g) PMs resolve complex problems requiring expert interpretation and application of policy and law, conduct inspection to ensure appropriate oversight and review of casework produced by LEAs, conduct statistical data quality checks, and ensure compliance with ERO policies and procedures.

As codified in 8 C.F.R. § 2.1- Authority of the Secretary of Homeland Security:
"All authorities and functions of the Department of Homeland Security to administer and enforce the immigration laws are vested in the Secretary of Homeland Security. The Secretary

of Homeland Security may, in the Secretary's discretion, delegate any such authority or function to any official, officer, or employee of the Department of Homeland Security, including delegation through successive re-delegation, or to any employee of the United States to the extent authorized by law. Such delegation may be made by regulation, directive, memorandum, or other means as deemed appropriate by the Secretary in the exercise of the Secretary's discretion. A delegation of authority or function may in the Secretary's discretion be published in the FEDERAL REGISTER, but such publication is not required."

The authority vested in the Secretary of Homeland Security by the Homeland Security Act of 2002 (HSA), as amended, was re-delegated to the Assistant Secretary for ICE via Department of Homeland Security Delegation No. 7030.2 and was successively re-delegated to the ERO EAD via ICE Delegation No. 0001. ICE Delegation No. 0001 authorizes the ERO EAD to re-delegate these authorities, "[u]nless otherwise proscribed by statute, Executive Order, or the terms of this delegation, the powers, authorities, responsibilities and functions delegated herein may be re-delegated in writing by the Directors of Detention and Removal or Investigation or by the Field Office Directors or Special Agents in Charge to appropriate subordinate officials of ICE, and may be successively re-delegated to other officers or employees of ICE qualified to exercise the authority."

Discussion

ICE can internally delegate signatory authority but should follow through with an amendment to the regulations that reflect this additional delegation.

- (1) **Notice to Appear (NTA)** - the authority to issue an NTA is found in 8 C.F.R. § 239.1 Notice to appear. A non-supervisory GS-14 program manager is not included in the list of authorized issuers of an NTA. However, 8 C.F.R. § 239.1 grants this authority to "[o]ther officers or employees of the Department or of the United States who are delegated the authority as provided by "8 C.F.R. § 2.1 to issue notices to appear." (8 C.F.R. § 239.1)
- (2) **Administrative Arrest Warrants (AAW)** - the authority to issue an AAW is found in 8 C.F.R. § 287.5(e)(2) Issuance of arrest warrants for immigration violations. A non-supervisory GS-14 program manager is not included in the list of authorized issuers of an AAW. However, 8 C.F.R. § 287.5(e)(2)(1) allows this authority for "[o]ther officers or employees of the Department or the United States who are delegated the authority as provided in 8 C.F.R. § 2.1 to issue warrants of arrest." (8 C.F.R. § 287.5(e)(2)).

8 CFR § 2.1 sets forth the general authority of the Secretary of Homeland Security. The authority has been delegated by the Secretary of Homeland Security and the ERO EAD may delegate the authority to GS-14 non-supervisory program managers to issue NTAs. Delegation 7030.2 (Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement) includes NTAs and AAWs.

SUBJECT: Re-Delegation of Authorities to GS-14 Non-Supervisory 287(g) Field Program Managers
Page 3

Pursuant to the authority vested in the ERO EAD, this memorandum will delegate the following authorities, with the authority to sign same, to ERO 287(g) program managers:

- Authority under INA § 236 (8 USC § 1226) and 8 C.F.R. § 236, relating to the apprehension and detention of aliens.
- Authority under INA § 238 (8 USC § 1228) and 8 C.F.R. § 238, relating to expedited removal of aliens convicted of committing aggravated felonies.
- Authority under INA § 239 (8 USC § 1229) and 8 C.F.R. § 239 relating to the initiation of removal proceedings through the issuance of NTAs and the cancellation of such NTAs prior to jurisdiction vesting with the Department of Justice Executive Office for Immigration Review.

These delegations are limited to ERO 287(g) program managers as described herein. Oversight and administration of the 287(g) program necessitates that these authorities be re-delegated to ERO 287(g) program managers in order to increase and ensure efficiency of the 287(g) program.

Nothing in this delegation, including any re-delegations, shall be construed to authorize any officer or employee of ICE to perform any immigration or law enforcement function, unless such officer or employee has completed the training and possesses the qualifications prescribed for such function. Any delegation or re-delegation of authority will be coordinated between the applicable Field Office Director and the Assistant Director for Secure Communities and Enforcement, in order to provide the necessary oversight.

Nothing in this re-delegation shall be construed to authorize any officer or employee of ICE to perform any function or exercise any authority that has not been delegated to the Director of ICE and further to the EAD of ERO.