

Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement

1. Purpose

This delegation vests in the Assistant Secretary for U.S. Immigration and Customs Enforcement (ICE) and through him to Customs officers, immigration officers, officers and agents of the Federal Protective Service (FPS), and other officers or employees of ICE the authorities described herein in order to accomplish the mission of ICE. This delegation is made through, and the exercise of any authorities therein is subject to the authority, direction, and control of, the Under Secretary for Border and Transportation Security.

2. Delegations

Pursuant to the authority vested in the Secretary of Homeland Security by law, including the Homeland Security Act of 2002 ("the Act"), I hereby delegate to the Assistant Secretary for ICE:

- (A) All authority vested in me by section 403(1) of the Homeland Security Act of 2002 and transferred to ICE by the Department of Homeland Security Reorganization Plan of January 30, 2003; and subject to a delegation of authority from the Department of the Treasury issued pursuant to section 412(a)(1) of the Act. Authorities delegated to ICE by the transfer of authorities under the Act or by delegation from the Secretary of the Treasury include 19 U.S.C. 482, 507, 1401, 1467, 1486, 1499, 1581, 1582, 1584, 1587, 1589a, 1590, 1595, 1628, 1703, and 2081. These authorities are subject to the limitations and reservations specified below and are solely for the purpose of enforcing the laws investigated by the U.S. Customs Service as of the date of the transfer to the Department of Homeland Security.
- (B) Authority vested in the Secretary of the Treasury, and delegated to the Secretary of Homeland Security by the delegation of authority from the Department of the Treasury issued pursuant to section 412(a)(1) of the Act, to examine documents, and to summons persons or tangible items

under 19 U.S.C. 1509; authority to subpoena persons or items under 21 U.S.C. 967, 22 U.S.C. 2778(e), 31 U.S.C. 5318, 50 U.S.C. 1702, and regulations promulgated there under authorizing investigation and enforcement by the U.S. Customs Service; and any other law for which the Assistant Secretary for ICE has investigative jurisdiction through the transfer of the U.S. Customs Service, Office of Investigations, to the ICE.

- (C) All authority vested in me by section 441 of the Homeland Security Act of 2002 respecting the Detention and Removal Program, the Intelligence Program, and the Investigations Program (6 U.S.C. 251(2) – (4)) of the former Immigration and Naturalization Service, and transferred to the ICE by the Department of Homeland Security Reorganization Plan of January 30, 2003.
- (D) All authority vested in me by sections 403(3) and 1706 of the Homeland Security Act of 2002 respecting the FPS and transferred to the ICE by the Department of Homeland Security Reorganization Plan of January 30, 2003.
- (E) All authority vested in me by the Homeland Security Act of 2002 and the Reorganization Plan of November 25, 2002, as modified January 30, 2003, respecting the investigation of misconduct committed by officers, agents, or employees of U.S. Customs and Border Protection (CBP), ICE, and U.S. Citizenship and Immigration Services (CIS).
- (F) In consultation with the Commissioner of CBP, as appropriate, authority to issue an award of compensation to an informer under section 619, Tariff Act of 1930, as amended, (19 U.S.C. 1619), only with the approval of the Secretary of Homeland Security when claimed in connection with any decision which has been acted upon or approved by the Secretary of Homeland Security.
- (G) Authority to investigate criminal violations of section 333 of Title 31 involving the misuse of the name or symbol of ICE or the title or name of any employee of the ICE; or the name or symbol of the Department of the Treasury or the Secretary or any Treasury employee in connection with activities within the jurisdiction of the ICE.
- (H) Authority under section 103(a)(1) of the Immigration and Nationality Act of 1952, as amended (“the INA”), 8 U.S.C. 1103(a)(1), to enforce and administer the immigration laws (as defined in section 101(a)(17) of the INA) 18 U.S.C. 1101(a)(17) with respect to matters within the jurisdiction of ICE.

- (I) Authority to investigate alleged civil and criminal violations of the immigration laws, including but not limited to alleged fraud with respect to applications or determinations within the jurisdiction of the CBP or the CIS, and make recommendations for prosecutions or other appropriate action when deemed advisable.
- (J) Authority to register and fingerprint aliens in the United States, and exercise other functions relating to registration and changes of addresses as provided by section 262-66 of the INA, 8 U.S.C. 1302-06.
- (K) Authority to place removable aliens in removal proceedings.
- (L) Authority to cancel a notice to appear for removal proceedings before jurisdiction vests with the Executive Office for Immigration Review of the Department of Justice (the "EOIR").
- (M) Authority to parole an applicant for admission into the United States under section 212(d)(5) of the INA, 8 U.S.C. 1182(d)(5).
- (N) Authority to exercise prosecutorial discretion in immigration enforcement matters (including permitting withdrawal of an application for admission or voluntary return, and granting deferred action).
- (O) All authorities provided by section 287 of the INA, 8 U.S.C. 1357 (except for subsection 287(g)), and 8 C.F.R. Part 287 (except for subsections 287.10 and 287.11);
- (P) Authority to consent on behalf of the Department of Homeland Security to a plea or other agreement in connection with criminal proceedings promising non-removal or other immigration benefits (see 28 C.F.R. 0.197); Provided that, such authority shall be exercised in consultation with the Director of CIS and the Commissioner of CBP with respect to any benefits, actions or determinations under their respective jurisdictions.
- (Q) Authority to administer and enforce sections 274A (8 U.S.C. 1324a), 274C (8 U.S.C. 1324c), and 274D (8 U.S.C. 1324d) of the INA, including authority to issue orders.
- (R) Authority to grant voluntary departure under section 240B of the INA, 8 U.S.C. 1229c.
- (S) Authority provided by section 235(d) of the INA (8 U.S.C. 1225(d)), including but not limited to administering oaths, taking evidence, and

requiring by subpoena the attendance and testimony of witnesses and the production of books, papers, and documents.

- (T) Authority under the immigration laws, including but not limited to sections 235, 236, and 241 of the INA (8 U.S.C. 1225, 1226, and 1231), to issue and execute detainers and warrants of arrest or removal, detain aliens, release aliens on bond and other appropriate conditions as provided by law, and remove aliens from the United States.
- (U) Authority to approve surety bonds issued pursuant to the immigration laws, to determine whether such surety bonds have been breached, and to take appropriate action to protect the interests of the United States with respect to such surety bonds.
- (V) Authority to exercise departure control authorities under section 215 of the INA, (8 U.S.C. 1185) and 8 C.F.R. Part 215.
- (W) Authority to grant stays of removal under 8 C.F.R. 241.6.
- (X) Authority to permit self-removal under 8 C.F.R. 241.7.
- (Y) Authority to reinstate exclusion, deportation and removal orders under section 241 of the INA, 8 U.S.C. 1231, and 8 C.F.R. 241.8.
- (Z) Authority, in consultation and cooperation with the Commissioner of CBP, the Director of CIS, the Under Secretary for Management, and the Director of the Office of Shared Services, to administer the program to collect information relating to nonimmigrant foreign students and other exchange program participants (SEVIS), as provided by section 442(a)(4) of the Homeland Security Act of 2002.
- (AA) Authority to enforce the forfeiture and civil penalty provisions of the immigration laws, including but not limited to section 274 of the INA, 8 U.S.C.1324.
- (BB) Authority, in consultation with appropriate components of the Department of Justice, the Department of Homeland Security, and other governmental entities, to make determinations in matters within the jurisdiction of the ICE with respect to "S", "T", and "U" nonimmigrants.
- (CC) Authority to take action under 8 C.F.R. 235.8(b) with respect to certain inadmissible aliens.
- (DD) Authority to make certifications under section 294 of the INA, 8 U.S.C. 1363a, with respect to undercover investigations and to exercise authorities authorized under section 294 pursuant to such certifications.

- (EE) Authority to design and implement the managerial rotation program described in section 441(a)(4) of the Homeland Security Act of 2002 with respect to employees of ICE.
- (FF) Authority to establish offices and station officers and employees of the ICE in foreign countries as provided by section 103(a)(7) of the INA, 8 U.S.C. 1103(a)(7), and other applicable law, and to perform such other activities with respect to the international operations of the Department of Homeland Security as the Secretary may direct.
- (GG) Authority to maintain a central file as provided by section 290 of the INA, 8 U.S.C. 1360, and other records systems and files necessary and appropriate for the operations of ICE, in accordance with applicable law.
- (HH) With respect to the transferred functions of the FPS, authority to:
 - (1) Protect buildings, grounds, and property that are owned, occupied, or secured by the Federal Government;
 - (2) At the request of any Federal agency having charge or control of property owned or occupied by the Federal Government, detail officers and agents for the protection of property and persons on the property;
 - (3) Designate employees of the Department of Homeland Security as officers and agents; detail officers and agents on request of other agencies; and use facilities and services of existing Federal, State and local law enforcement agencies, with the consent of those agencies;
 - (4) Authorize officers and agents of FPS who have been duly authorized to perform investigative functions, while engaged in the performance of their duties in conducting investigations, the power to administer oaths to any person;
 - (5) Purchase, repair, and clean uniforms of officers and agents;
 - (6) Authorize issuance of arms and ammunition for the protection force of FPS;
 - (7) Procure and contract for guard services and other goods and services related to the FPS mission, in accordance with applicable Department of Homeland Security management directives governing these topics;
 - (8) Recommend to the Secretary assignment of Home to Work vehicle transportation to designated officers and investigators of the FPS;

- (9) Authorize take-home-authority for weapons assigned to officers and agents in accordance with applicable guidelines;
 - (10) Issue and authorize re-delegation of authority to issue property passes to employees for taking Government-owned property off-site; and
 - (11) Administer the radio frequency program for the FPS.
- (II) Authority effective November 2, 2003 to exercise the authorities, functions and duties in connection with the administration of the Federal Air Marshal Program under 49 U.S.C. 44917 and supervise its personnel; and
- (JJ) Perform other such functions as I may direct.

In exercising the authority delegated by this Order, the Assistant Secretary of ICE shall be governed by the Homeland Security Act of 2002; all applicable federal laws, rules and regulations; and the policies, procedures, direction, authority and control of the Secretary, the Deputy Secretary, the Under Secretary for Border and Transportation Security, the Under Secretary for Management, or other officer authorized by the Secretary to prescribe such policies and procedures or exercise such authority, direction and control. Nothing in this Order shall be construed to limit or detract from the authority of the Secretary under section 102(a)(2) and (3) of the Homeland Security Act of 2002 and other applicable law.

3. Reservations

The above delegations of authority to the Assistant Secretary for ICE in no way limit the functions, rights, privileges, powers, and duties vested in the Commissioner of CBP or in the Director of CIS by law, including authority provided by the above listed statutes or any delegation from the Secretary of Homeland Security.

The Assistant Secretary is directed to coordinate, to the extent necessary and appropriate, his exercise of the authorities under this delegation with other officials to whom I have delegated authorities that complement, relate to, involve, or are concurrent with the authorities in this delegation. Specific reference in this delegation to coordination or consultation with other officials as to certain matters is not meant to limit the responsibility of the Assistant Secretary to coordinate or consult in other matters when appropriate. Delegation of an authority to the Assistant Secretary shall not be construed to mean that the authority may be exclusively exercised by the Assistant Secretary; in particular, reference is made to delegations of authority to the Commissioner of CBP and to the Director of CIS that are with respect to many

authorities parallel to, concurrent with, or overlapping with this delegation to the Assistant Secretary.

Unless specifically provided therein, nothing in this delegation authorizes the Assistant Secretary to adjudicate any application for any benefit under the immigration laws, grant any immigration status (including, but not limited to, U.S. citizenship, lawful permanent residence, nonimmigrant status, refugee status, asylum, temporary protected status), make any determination under the Convention Against Torture, grant any waiver of a ground of inadmissibility, grant employment authorization, admit any alien to the United States, or refer any case to the Attorney General under 8 C.F.R. 3.1(h)(2) or 28 C.F.R. 68.55(b).

Nothing in this delegation is intended to grant or provide authority or jurisdiction over any determination or matter within the sole authority of the Executive Office for Immigration Review of the Department of Justice.

4. Re-delegations

Unless otherwise prescribed by statute, Executive Order, or the terms of this delegation, the authority contained in this delegation may be re-delegated in writing by the Assistant Secretary to an appropriate subordinate official of ICE, and may be successively re-delegated to other officers or employees of ICE qualified to exercise the authority. The Assistant Secretary may also re-delegate the authority contained in this delegation to the Commissioner of CBP or to the Director of CIS, with their consent.

In addition, the following re-delegations to officers and employees of ICE (including officers and employees in an Interim or Acting capacity) are in effect pursuant to this delegation, unless modified or withdrawn by the Assistant Secretary or other authorized official:

- (A) Director of Intelligence. The Director of Intelligence is delegated the authority to supervise and direct the ICE intelligence program and officers and employees within the INS intelligence program. Officers and employees within the INS intelligence program will continue to be delegated the authorities and responsibilities they possess at 11:59 p.m. on February 28, 2003 following their transfer to ICE unless modified, revoked or withdrawn by the Assistant Secretary or other authorized official.
- (B) Director of the FPS. The Director of the FPS is delegated the authority and responsibility to supervise and direct the FPS and officers, agents and employees of FPS. Officers and employees of the FPS are designated with, and will continue to be delegated following their transfer to the BICE the authorities and responsibilities they exercise at 11:59 p.m. on February 28, 2003, unless modified, revoked or withdrawn by the

Assistant Secretary or other authorized official.

- (C) Director of Customs Investigations. The Director of Customs Investigations is delegated authority and responsibility to supervise and direct the investigative activities of ICE with respect to the customs laws, and to provide direction and supervision to the following:
 - (1) Special Agents in Charge.
 - (2) Assistant Special Agent in Charge.
 - (3) Associate Special Agents in Charge.
 - (4) Resident Agent in Charge.
 - (5) Customs Officers.

- (D) Director of Immigration Interior Enforcement. The Director of Immigration Interior Enforcement is delegated authority and responsibility for the field operations of ICE with respect to the immigration laws, for providing direction and supervision to the Immigration Investigations Program and the Removal and Detention Program, and for providing direction to and supervision of the Regional Directors for Interior Enforcement within their respective regions.
 - (1) Regional Directors for Interior Enforcement. Regional Directors are delegated authority and responsibility for the field operations of ICE with respect to the immigration laws within their respective regions (including detention and removal), and for providing direction to and supervision of the District Directors within their respective geographic areas; Provided that, this re-delegation shall not be construed to delegate to Regional Directors for Interior Enforcement any authority or responsibility exceeding that provided to INS Regional Directors by chapter 8 of the Code of Federal Regulations as in force on February 28, 2003.
 - (2) District Directors for Interior Enforcement. District Directors for Interior Enforcement are delegated authority and responsibility for the field operations of ICE with respect to the immigration laws within their respective geographical areas (including detention and removal); Provided that, this re-delegation shall not be construed to delegate to District Directors for Interior Enforcement any authority or responsibility exceeding that provided to INS District Directors by chapter 8 of the Code of Federal Regulations as in force on February 28, 2003.
 - (3) Immigration Officers. The Assistant Secretary of ICE, the Director of Immigration Interior Enforcement, any Regional or District Director for Interior Enforcement, and any deportation officer, detention enforcement officer, detention officer, special agent,

investigative assistant, intelligence agent, immigration agent (investigations), or other immigration officer (as described in section 103 of the INA or 8 C.F.R. 103.1(j)), or senior or supervisory officer of such employee, within ICE, is designated as an immigration officer authorized to exercise, and hereby delegated, the powers and duties of such officer as specified by the immigration laws and chapter 8 of the Code of Federal Regulations.

- (4) Officers and employees within the INS programs transferred to ICE. Officers and employees within the INS detention and removal program, investigations program or other INS program transferred to ICE will continue to be delegated following their transfer to ICE the authorities and responsibilities they possess at 11:59 p.m. on February 28, 2003, including but not limited to any authority to issue or cancel notices to appear under 8 C.F.R. Part 239 as in effect at such date and time, unless modified, revoked or withdrawn by the Assistant Secretary or other authorized official.

Nothing in the re-delegations to officers and employees of ICE provided by this delegation shall be construed to limit the exercise by the Assistant Secretary of such authority, or his authority to direct and control such officers and employees in their exercise of re-delegated authority.

Nothing in the re-delegations to officers and employees of ICE provided by this 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 Assistant Secretary.

Nothing in this delegation, including any re-delegations, shall be construed to authorize any officer or employee of ICE to perform any immigration officer, customs officer, law enforcement or other function unless such officer or employee has completed the training and possesses the qualifications prescribed for such function.

Any redelegation of authority in effect at 11:59 p.m. on February 28, 2003 shall remain in effect unless modified, revoked, or withdrawn by the Assistant Secretary or other authorized official.

5. Authorities

Homeland Security Act, 116 Stat. 2135, Pub. L. 107-296, 101, 403, 441, 1502, 1706 (2002); 5 U.S.C. 301; Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101 *et seq.*; the "immigration laws," as defined by section 101(a)(17) of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101(a)(17); 40 U.S.C. 1315; The President's Homeland Security Reorganization Plan, November 25, 2002, as modified, January 30, 2003.

6. Credentials

Any badge, credential, seal, stamp or such other documentation that is valid at 11:59 p.m. on February 28, 2003, and that identifies an officer or employee of the INS, Customs Service, or FPS who is transferred to ICE, shall continue in effect as a badge, credential or other documentation identifying an officer or employee of ICE until its expiration, revocation, withdrawal, or replacement, whichever comes first. The Assistant Secretary of ICE may authorize replacement, renewal, or new issuance of badges, credentials, seals, stamps or other such items or other documents to ICE officers or employees using INS, Customs Service, or FPS identity and forms until ICE forms are available.

7. Office of Primary Interest

The Office of the Assistant Secretary for U.S. Immigration and Customs Enforcement is the office of primary interest in this delegation.

8. Cancellation

Delegation number 7030.1 is rescinded.

9. Effective Date and Time

This delegation of authority shall take effect at 12:00 midnight, March 1, 2003.


Secretary of Homeland Security

NOV 13 2004