

**Interim Policy Regarding Referral of Cases by USCIS Field Offices to ICE for Enforcement Actions, including the Arrest of Individuals Seeking Immigration Benefits or Services**

A USCIS field office director (FOD) may contact Immigration and Customs Enforcement (ICE) to facilitate an enforcement action, including the arrest of an individual in a field office only after consulting with an attorney in the Office of the Chief Counsel (OCC) to determine whether: (1) the individual is amenable to ICE enforcement or arrest authority; and, (2) the overall facts and circumstances support USCIS exercising discretion not to refer the individual to ICE. This interim policy supports ICE priorities as expressed in its Congressionally mandated Secure Communities Initiative.

**1. Is the individual amenable to ICE enforcement and/or arrest authority?**

A referral to ICE may be considered where an individual is amenable to the issuance and filing of a charging document with the Executive Office for Immigration Review; has an unexecuted final order of removal; or appears subject to reinstatement of a previously executed order of removal.<sup>1</sup>

To determine whether an individual should be referred to ICE, the FOD should review the A-file before any scheduled USCIS interview or interaction, and present to the OCC attorney evidence to establish the individual's removability. This may include the Record of Deportable Alien (Form I-213); an order of removal, including any evidence of its execution; certified conviction records; data concerning the individual's immigration history; sworn statements; and any other evidence to show the individual is inadmissible under INA section 212(a), or deportable under INA section 237(a).

**2. Do the factors in the case support the exercise of discretion by USCIS not to refer the case to ICE?**

When considering whether to contact ICE, USCIS officers are expected to exercise discretion in a judicious manner to promote the interests of justice. "There is no precise formula for identifying which cases warrant a favorable exercise of discretion." See INS Memorandum, "Exercising Prosecutorial Discretion," November 17, 2000. However, in consultation with counsel, the FOD should consider all of the factors listed in the November 17, 2000 memorandum at pages 7 and 8.

In addition, ICE's July 2010 memo "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of" sets forth ICE's current enforcement priorities which USCIS should follow in considering whether to contact ICE for purposes a referral for arrest. Only matters which fall into the top three Priorities should be considered for purposes of an arrest referral.

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<sup>1</sup> Where an outstanding criminal warrant applies to an individual encountered by USCIS, Policy Memorandum 110 dictates referral of the case to ICE.

If after considering all of the factors listed in the Meissner Memo, and referencing the ICE Enforcement Priorities Memo the FOD in consultation with OCC concludes referral to ICE is appropriate, the FOD shall explain in writing and include in the individual's A-file the reasons supporting such referral. Where discretion is exercised not to refer the case to ICE, the FOD should similarly document in writing the reasons for non-referral. Such reasons may simply state that the case did not match ICE's enforcement priorities and/or did not meet the discretionary review outlined in the Meissner memo. The confirming memo should be signed and dated.

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