

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 02/26/2003

To: All FBIHQ Divisions
All Field Offices

Attn: Assistant Director
ADIC
SAC
CDC

From: Office of the General Counsel
Investigative Law Unit

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Case ID #: 66F-HQ-A1085154-MISC

Title: DELEGATION OF AUTHORITY TO THE FBI
TO EXERCISE THE POWERS AND DUTIES
OF IMMIGRATION OFFICERS

Enclosure: Memorandum summarizing the power to arrest under the Immigration and Naturalization Act (INA) and listing a number of INA violations the FBI may enforce pursuant to the delegation and guidance contained in this communication.

Synopsis: This communication advises the receiving offices that the Attorney General has authorized Agents to exercise the functions of immigration officers in some circumstances and provides guidance on the implementation of this authority. This guidance was prepared in consultation with the Department of Justice, the SAC Advisory Committee and FBIHQ operational components.

Details: The Attorney General recently issued an Order delegating authority to exercise the powers and duties of Immigration Officers to the FBI. The Order, which is now in effect, grants powers that will be particularly useful in the FBI's counterterrorism investigations. In pertinent part, the Order states as follows:

I authorize the Director of the Federal Bureau of Investigation ("FBI") and, under his direction, Special Agents of the FBI, to exercise the functions of immigration

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officers for the purpose of (1) investigating, determining the location of, and apprehending, any alien who is in the United States in violation of the Immigration and Nationality Act of 1952, as amended, or any other law or regulation relating to visas or the conditions of visas, admission of aliens or the conditions of admission, or the maintenance of status as an immigrant or nonimmigrant or in any category of nonimmigrant; or (2) enforcing any requirements of such statutes or regulations, including, but not limited to, nonimmigrant aliens subject to special registration under 8 C.F.R. § 264.1(f).

This communication is to provide guidance on the implementation of this Order.

Even prior to the issuance of the Attorney General's Order, the FBI possessed broad authority to investigate federal criminal violations related to immigration offenses under both Title 18 and Title 8 of the United States Code and to arrest those who commit such criminal violations. There will be no change in the handling or the classification of those investigations. The Attorney General's Order expands the FBI's authority to include the investigation and arrest of aliens who have committed or are committing non-criminal, i.e., civil, violations of the Immigration and Nationality Act of 1952 (INA) and related statutes. This guidance addresses the handling of aliens who are non-criminal violators.

At the outset, it should be understood that the Immigration and Naturalization Service and its successor within the Department of Homeland Security (referred to hereafter collectively as the "INS") will retain primary jurisdiction over the enforcement of immigration statutes, including both criminal and civil violations of the INA. The FBI will not create a separate investigative program to cover violations of the INA, as these violations will ordinarily be addressed only in support of existing investigative programs. Individuals detained or arrested for immigration violations should be turned over to INS' custody as soon as possible. The Attorney General's Order provides authority in those circumstances when agents of the INS are not immediately available to take custody of an alien violator. It also provides a basis for the apprehension of alien violators encountered in the course of the FBI's counterterrorism investigations.

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In all instances, the Order should be employed in a manner that strengthens the FBI's ability to address its priorities, rather than diverting from them. Accordingly, as a general rule, when, during the course of an investigation, agents encounter an alien who is reasonably believed to be in violation of the INA, they should exercise their authority under the Order to detain, question, and, if justified, arrest the alien if the exercise of these powers will serve the objectives of the investigation. Conversely, if the exercise of these powers will harm or undermine the investigation, agents are under no obligation to do so. Even in the absence of an ongoing investigation, agents should exercise all appropriate authority under this Order when necessary to prevent serious bodily injury or destruction of property. With respect to counterterrorism investigations in particular, and keeping in mind the FBI's primary mission of preventing acts of terrorism against American interests, agents should not hesitate to exercise any or all of their lawful authority under the Order as appropriate to serve this vital mission, or to refrain from exercising these powers if, in the judgment of the agent, the FBI's investigative interests are best served by doing so.¹

There may be instances, unrelated to ongoing investigations, in which the FBI will receive requests for assistance from state or local law enforcement who have detained aliens for immigration violations. Such requests should ordinarily be referred to the INS. In those instances in which

¹ In furtherance of its mission to prevent acts of terrorism, the FBI has at its disposal the National Security Entry-Exit Registration System (NSEERS) database, maintained by the INS. This database contains comprehensive information on temporary visitors to the United States who are from countries designated by the Attorney General or who meet pre-existing criteria related to national security. Any NSEERS registrant who violates his requirements (e.g., by overstaying his visa, or by failing to verify his address and activities with the INS after thirty days) has committed a violation of the INA. Such violations are immediately identified by NSEERS, and, like other violations of the INA, the NSEERS violation may serve as a basis for arrest when arrest of the violator will advance an investigation and the FBI's operational priorities. In such cases, the INS should be notified and consulted as soon as possible. In addition, FBI personnel supervising counterterrorism investigations should regularly consult the NSEERS database to determine if aliens who have violated their requirements have any connection to terrorist suspects already under FBI investigation.

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the INS is unable to respond to the request, each ADIC or SAC should exercise his or her discretion, based on resources and other relevant considerations, as to whether to provide the requested assistance and, if so, to what extent.

The Order grants FBI agents the authority to exercise the powers to arrest an alien without warrant set forth in Title 8, U.S. Code, Section 1357. Under that section, agents may arrest an alien when they have reason to believe the alien is present in the U.S. in violation of an immigration provision of the INA, a standard that can be met by an admission from the alien, a review of immigration records, or other reliable information. In many cases, agents will be unable to make a determination that an alien is in violation without the assistance of the INS. Each Field Office should consult with their local INS office to develop a procedure for obtaining such assistance on a local level. In addition, the INS maintains a Law Enforcement Support Center that is staffed around the clock and can perform records checks and provide other assistance.

Each Field Office should also consult with their local INS office to formulate procedures for the prompt transfer to INS' custody of any alien arrested by the FBI under the authority of the Attorney General's Order. Any arrest made under the authority of this Order should be properly documented in an FD-302.

Attached hereto is a memorandum, prepared by the Office of General Counsel, summarizing a number of the commonly-encountered INA violations. In the near future, Headquarters personnel will be working with their counterparts at the INS and then the Department of Homeland Security to resolve issues arising from this Order. Training materials on immigration enforcement will soon be disseminated through the Chief Division Counsel of each Field Office, and additional training will be provided in the course of the upcoming counterterrorism training ordered by the Deputy Attorney General.

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LEAD(s):

Set Lead 1: (Adm)

ALL RECEIVING OFFICES

Read and clear.

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