

Memorandum



To : All Receiving Offices Date 02/26/2003

From : Office of the General Counsel
Investigative Law Unit

Subject: Immigration and Naturalization Act

The purpose of this memorandum is to provide a brief summary of the power to arrest under the Immigration and Naturalization Act (INA) and list, in chart form, some of the INA violations (both criminal and civil) that the FBI may enforce pursuant to the Attorney General's Order delegating to the FBI, in certain circumstances, the authority to exercise the functions of immigration officers. The list of INA violations is not all-inclusive. This memorandum is intended to provide Agents with preliminary guidance. More comprehensive guidance will be forthcoming in training materials disseminated to the field offices through the Chief Division Counsel.

Pursuant to 8 U.S.C. § 1357(a)(2), an immigration officer¹ is permitted, in the absence of a warrant, to arrest any alien who in the officer's presence is entering or attempting to enter the U.S. in violation of any law or regulation regarding the admission, exclusion, expulsion, or removal of aliens or to arrest any alien in the U.S. if he has reason to believe that the alien is in the U.S. in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest. When an alien is arrested under these circumstances, the alien must be taken without unnecessary delay for examination before an officer of the INS having authority to examine aliens as to their right to enter or remain in the United States.² The same statute permits immigration officers to question an alien or a person believed to be an alien as to his or her right to be in

¹ The powers of an officer of the Immigration and Naturalization Service (INS) are primarily set forth in 8 U.S.C. § 1357, 8 U.S.C. § 1226, and 8 C.F.R. 287.

² The disposition of cases of aliens arrested without warrant is provided in 8 C.F.R. 287.3.

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the U.S. 8 U.S.C. § 1357(a)(1). In addition, immigration officers are authorized to make arrests without a warrant for any offense against the U.S. committed in the officer's presence or for any felony cognizable under the laws of the U.S. if the officer has reasonable grounds to believe that the arrestee has committed such a felony, provided that there is a likelihood of the person escaping before a warrant can be obtained for his arrest. 8 U.S.C. § 1357(a)(5). In ordinary circumstances, following the warrantless arrest of an alien, a determination will be made within 48 hours whether the alien will be continued in custody or released on bond or recognizance. 8 C.F.R. 287.3(d).

Regulations concerning the issuance and service of arrest warrants for immigration violations are found at 8 C.F.R. 287.5(e). While agents of the FBI will have power to execute warrants of arrest issued by INS' officials, FBI personnel are not permitted to issue warrants under 8 C.F.R. 287.5(e) at the present time.

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INA VIOLATIONS - CRIMINAL

Citation	Violation	Summary or comment
8 USC § 1306	Willful failure to register, failure to notify INS of change of address, making false statements, making counterfeit registration cards. See 8 USC §§ 1302, 1303, and 1305. See also regulations at 8 CFR 264.1 regarding registration and fingerprinting of aliens (information on certain aliens required to register under these regulations is contained in NSEERS).	Alien is guilty of misdemeanor and shall be fined up to \$1000 or be imprisoned not more than 6 months for failure to register. Alien is guilty of misdemeanor, shall be fined up to \$200 and/or imprisoned 30 days, and shall be removed for willful failure to notify INS of change of address. Making false statements is a misdemeanor, shall be fined up to \$1000 and/or imprisoned not more than 6mo; and alien may be removed. Counterfeiting carries a fine up to \$5000 and/or imprisonment not more than 5yrs.
8 USC §§ 1323, 1324	Bringing in and harboring certain aliens	May be fined and/or imprisoned.
8 USC § 1324(c)	Document Fraud	This section lists several activities involving creation of false documents to acquire a benefit under this chapter or the use of lawfully issued documents for fraudulent purposes.

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Citation	Violation	Summary or comment
8 USC § 1325 (a)	Illegal Entry	Any alien who (1) enters or attempts to enter the U.S. at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the U.S. by willfully false or misleading representation or the willful concealment of a material fact, shall for the first offense be fined and/or imprisoned not more than 6 months, and for a subsequent commission of any such offense, shall be fined and/or imprisoned not more than 2 years.

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Citation	Violation	Summary or comment
8 USC § 1326(a)	Reentry of Removed Aliens	Any alien who has been denied admission, excluded, deported, or removed or had departed the U.S. while an order of exclusion, deportation, or removal is outstanding, and thereafter enters, attempts to enter, or is at any time found in the U.S., unless (A) prior to his reembarkation at a place outside the U.S. or his application for admission from foreign contiguous territory, the AG has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior act, shall be fined and/or imprisoned not more than 2 years.

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Citation	Violation	Summary or comment
8 USC § 1253(a) (1)	Penalty for Failure to Depart	Any alien who willfully fails or refuses to depart from the U.S. within a period of 90 days from date of final administrative or court order; or refuses to make timely travel arrangements; or connives, conspires, or takes any action designed to or with the purpose to prevent or hamper departure; or fails or refuses to present themselves for deportation; shall be fined and/or imprisoned not more than 4 yrs (10 yrs if the alien is a class member described in 8 USC § 1227(a) (1) (E), (2), (3), or (4)).
8 USC § 1253(b)	Willful failure to comply with terms of release under supervision	Any alien who willfully fails to comply with the terms of their release under supervision or knowingly gives false information shall be fined \$1000 or less and/or imprisoned for less than 1 yr.

INA VIOLATIONS - CIVIL

The following chart lists some of the deportable civil violations of INS law. The Attorney General's Order authorizes the FBI to exercise the powers and duties of immigration officers for the purposes of investigating, determining the location of, and apprehending, any alien who is in the U.S. in

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violation of the INA, or any other law or regulation relating to visas or the condition of visas, admission of aliens or the conditions of admission, or the maintenance of status as an immigrant or nonimmigrant. 8 U.S.C. § 1182 sets forth the classes of aliens ineligible for visa or admission, including but not limited to health-related grounds, criminal grounds, money laundering activities, and national security concerns. 8 U.S.C. § 1227 sets forth the circumstances for deportation of aliens who have been admitted into the U.S., but have violated provisions of the INA, or have entered the U.S. but are ineligible under 8 U.S.C. § 1182.

Citation	Violation	Summary or Comment
8 USC § 1227 (a) (1) (A)	Inadmissible at time of entry	Classes of aliens who are inadmissible can be found at 8 USC § 1182. A waiver for mis- representation at time of admission is available at 8 USC § 1227(a) (1) (H).
8 USC § 1227 (a) (1) (B)	Present in U.S. in violation of law	Ordinarily applicable to those who violated the law by their manner of entry.
8 USC § 1227 (a) (1) (C)	Violated nonimmigrant status or conditions of entry	Aliens who have overstayed their visa or violated conditions of entry are deportable.
8 USC § 1227 (a) (1) (E)	Smuggling	Any alien who knowingly encouraged, induced, assisted, abetted, or aided another alien to enter or try to enter the U.S. illegally.
8 USC § 1227 (a) (1) (G)	Marriage Fraud	Generally, aliens whose entry was procured on basis of marriage entered into less than 2yrs prior and which, within 2yrs after entry, the marriage is judicially annulled or terminated, are deportable.
8 USC § 1227, (a) (2)	Criminal Offenses	Any alien convicted of the offenses listed in this section, is deportable.

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Citation	Violation	Summary or Comment
8 USC § 1227 (a) (3) (A) and 8 USC § 1305	Change of address	Aliens required to register, who willfully fail to notify INS of change of address are deportable.
8 USC § 1227 (a) (3) (B) and 8 USC § 1306(c)	Failure to register or falsification of documents	Aliens are also deportable for violation of 22 USC § 611, Foreign Agents Registration Act, or 18 USC § 1546, Fraud and Misuse of Visas, Permits, and other Admission Documents.
8 USC § 1227 (a) (3) (C) and 8 USC § 1324c	Document Fraud	Waiver may be authorized by AG in certain circumstances. No court has jurisdiction to review AG decision.
8 USC § 1227 (a) (3) (D)	Falsely Claiming Citizenship	Aliens who falsely represents, or have falsely represented, citizenship for any purpose or benefit (federal or state). Exception for children who believed they were a U.S. citizen.
8 USC § 1227 (a) (4) (C)	Foreign Policy	Deportable if alien's presence or activities in U.S. would have potentially serious adverse foreign policy consequences.