

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

1005.2: Domestic Violence: Lautenberg Amendment Compliance Policy

Issue Date: November 23, 2012
Effective Date: November 23, 2012
Superseded: This Directive supersedes ICE Directive 1005.1 (formerly 1-7.0), Domestic Violence: Lautenberg Amendment Compliance Policy, dated September 8, 2006. This Directive supersedes all previous issuances, guidance, and procedures that are inconsistent with the policy, guidance, and procedures contained in this Directive.

Federal Enterprise Architecture Number: 306-112-002b

1. **Purpose/Background.** The Lautenberg Amendment to the Gun Control Act of 1968 (Title 18, United States Code (U.S.C.) Section 922(g)(9)), hereinafter referred to as the "Lautenberg Amendment" makes it illegal for individuals who have been convicted in any court of a misdemeanor crime of domestic violence to possess a firearm or ammunition that has been shipped or transported in interstate or foreign commerce. This provision makes no exception for law enforcement officers (LEOs) and applies to persons convicted at any time prior to or after the passage of the legislation on September 30, 1996. Because U.S. Immigration and Customs Enforcement (ICE) LEOs must be qualified to carry firearms as a condition of employment, the Lautenberg Amendment would render individuals who have been convicted of a crime of domestic violence ineligible for employment as an ICE LEO. The Lautenberg Amendment also makes it a felony for anyone to sell or issue a firearm or ammunition to a person with such a conviction.

This Directive ensures that tentatively selected applicants, hereinafter referred to as applicants, for ICE LEO positions and individuals who are currently employed by ICE as LEOs are fully aware of the provisions of the Lautenberg Amendment and its ramifications.

2. **Policy.** All applicable ICE employees shall be aware of and comply with the Lautenberg Amendment domestic violence provisions and responsibilities. A condition of employment for LEO positions is to be qualified to carry a firearm; therefore, job opportunity announcements for positions authorizing the carriage of a firearm must include language describing the Lautenberg Amendment provisions and responsibilities. All applicants for LEO positions with ICE must disclose whether or not they have been convicted of a misdemeanor crime of domestic violence. Any ICE LEO applicant who has been convicted of a crime of domestic violence shall be removed from consideration for employment as a LEO with ICE. Any ICE LEO arrested or charged with a crime of domestic violence or named as the subject in a restraining order related to domestic violence as described in 18 U.S.C. § 922 will not be authorized to carry firearms or

ammunition pending disposition of the case. Any ICE LEO convicted of a crime of domestic violence will be removed from a LEO position.

3. **Definitions.** The following definitions apply for purposes of this directive only.
 - 3.1. **Authorized Officer.** An ICE employee authorized to carry an ICE-issued firearm(s) and/or approved, personally owned handgun(s) pursuant to 19 U.S.C. § 1589a, 8 U.S.C. § 1357, and/or other statutory authority as delegated to ICE employees by the Director of ICE (see the Interim ICE Firearms Policy, as amended or updated).
 - 3.2. **Convicted of a Misdemeanor Crime of Domestic Violence.** The accused was found guilty under federal or state law of a crime defined by 18 U.S.C. § 921(a)(33)(A), provided that the accused “was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case,” and if the accused was entitled to a trial by jury, the case was, in fact, tried by jury or the accused “knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise” (see 18 U.S.C. § 921(a)(33)(B)).
 - 3.3. **Lautenberg Amendment.** Refers to 18 U.S.C. § 922(g)(9), which states in part that it is illegal for anyone who has been convicted of a misdemeanor crime of domestic violence to ship, transport, possess, or receive firearms or ammunition.
 - 3.4. **Lautenberg Certification Form.** Certification form used to attest whether an employee has been convicted of a misdemeanor crime of domestic violence as defined in the statute, which captures the individual’s signature, acknowledging that the employee is aware of and understands the Lautenberg Amendment provisions.
 - 3.5. **Lautenberg Fact Sheet.** An information fact sheet provided to current ICE LEOs highlighting issues involving the Lautenberg Amendment.
 - 3.6. **Law Enforcement Officer (LEO) Position.** For purposes of this directive, an authorized officer involved in daily, routine, or recurring law enforcement activities and operations in support of ICE’s mission.
 - 3.7. **Misdemeanor Crime of Domestic Violence.** An offense that is considered a misdemeanor under federal, state, or tribal law and has, as an element, the use or attempted use of physical force, or threatened use of a deadly weapon. This offense is committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim (see 18 U.S.C. § 921(a)(33)(A)).
 - 3.8. **Responsible Officials.** ICE employees accountable for all aspects of the ICE firearms and use of force program within their areas of responsibility. At ICE field locations, these officials are Homeland Security Investigations (HSI) Special Agents in Charge (SACs), Enforcement and Removal Operations (ERO) Field Office Directors, Office of Professional Responsibility (OPR) SACs, and HSI Office of International Affairs

Attachés (where applicable), and other officials designated in writing by the ICE Director. At ICE headquarters, these officials are the Deputy Director; Executive Associate Directors of HSI, ERO, and Management and Administration; and other officials designated in writing by the ICE Director.

- 3.9. **Senior Firearms Instructor (SFI).** An ICE-certified firearms instructor who has been designated in writing by his or her responsible official to manage the overall firearms and related use of force program within his or her area of responsibility. The employee appointed to this position shall successfully complete a training program specifically for SFIs as prescribed by the Assistant Director, National Firearms and Tactical Training Unit.
- 3.10. **Standard Form (SF) 86, Questionnaire for National Security Positions.** A form used in conducting background investigations, reinvestigations, and continuous evaluations of persons under consideration for, or retention in, national security positions and for individuals requiring eligibility for access to classified information.
- 3.11. **Without a Conviction.** A conviction that has been "expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms" (see 18 U.S.C. § 921(a)(33)(B)(ii)).

4. **Responsibilities.**

4.1. **The ICE Director**, or his or her designee, is responsible for:

- 1) Establishing policies consistent with laws, rules, federal regulations, and Department of Homeland Security (DHS) policies; and
- 2) Programming, budgeting, and allocating funds and other resources to meet the policy objectives of this directive.

4.2. **The Human Capital Officer**, or his or her designee, is responsible for:

- 1) Providing advice and guidance to ICE employees concerning the Lautenberg Amendment and ICE-related policies and procedures;
- 2) Upon notification of the investigation results, consulting with the appropriate management official or the Discipline and Adverse Action Panel for determining appropriate course of action (i.e., removal from a LEO position) on LEOs who have been convicted of a misdemeanor crime of domestic violence;
- 3) Including Lautenberg Amendment-related language in LEO job opportunity announcements;

- 4) Ensuring LEO applicants complete an SF 86, Questionnaire for National Security Positions, and after reviewing their responses to the Lautenberg questions, determining their eligibility for employment as a LEO and sending the completed SF 86 to the Personnel Security Unit (PSU) for further processing and recordkeeping; and
- 5) Retaining applicant records for a minimum of 2 years after the date of the last action taken on the application.

4.3 Headquarters Responsible Officials, or their designees, are responsible for ensuring implementation, ongoing monitoring, and evaluation of this directive throughout their directorate or program office and that their employees are in full compliance with the provisions of the Lautenberg Amendment.

4.4. SFIs are responsible for accepting for storage the ICE-issued firearms, ammunition, other ordnance and munitions, intermediate use of force devices, related use of force equipment, and other designated equipment or items to include the badge and credential from the supervisor of the LEO arrested or charged with a crime of domestic violence or named as the subject in a restraining order related to domestic violence.

4.5. The Responsible Official, or his or her designee, is responsible for:

- 1) Suspending or revoking an employee's authorization to carry a firearm in accordance with the Interim ICE Firearms Policy, as amended or updated;
- 2) Directing the immediate supervisor to retrieve the ICE-issued firearms, ammunition, other ordnance and munitions, intermediate use of force devices, related use of force equipment, and other designated equipment or items to include the badge and credential from LEOs arrested or charged with a crime of domestic violence or named as the subject in a restraining order related to domestic violence; and
- 3) Providing written notification to the LEO explaining the reason for the suspension or revocation of the authorization to carry a firearm.

4.6. Supervisors are responsible for:

- 1) Forwarding completed Lautenberg Certification Forms to their Responsible Officials for retention annually;
- 2) Requesting an investigation, through OPR, in cases where there is reason to believe an employee has submitted a fraudulent Lautenberg Certification Form;
- 3) Notifying the responsible official after a subordinate has been arrested for a misdemeanor crime of domestic violence;
- 4) Confirming that the subordinate informed OPR of the arrest;

- 5) Informing the LEO after his or her arrest for a misdemeanor crime of domestic violence while pending final disposition that he or she is no longer authorized to possess ICE-issued firearms, carry ICE-approved, personally-owned handguns, or possess ICE-issued ammunition; must comply with the laws of the jurisdiction where he or she resides; and cannot perform law enforcement duties;
- 6) Assigning an arrested, non-incarcerated LEO to administrative duties or administrative leave, as appropriate under the specific circumstances, pending final disposition of the case; and
- 7) Obtaining the LEO's ICE-issued firearms, ammunition, other ordnance and munitions, intermediate use of force devices, related use of force equipment, and other designated equipment or items to include the badge and credential, and turning these items over to the responsible SFI.

4.7 OPR, or its designee, is responsible for:

- 1) Upon notification of an ICE LEO's arrest for a misdemeanor crime of domestic violence, conducting an investigation; and
- 2) At the conclusion of the investigation, notifying the Office of Human Capital (OHC) and the affected employee's appropriate chain of command.

4.8 LEOs are responsible for:

- 1) Completing the Lautenberg Certification Form and providing it to their supervisor annually;
- 2) Immediately notifying their first-line supervisor and OPR of their arrest for a misdemeanor crime of domestic violence; and
- 3) After their arrest for a misdemeanor crime of domestic violence, surrendering any ICE-issued firearms, ammunition, other ordnance and munitions, intermediate use of force devices, related use of force equipment, and other designated equipment or items to include the badge and credential to their supervisor.

5. Procedures.

5.1. Procedures for Applicants.

- 1) **Requesting Completion of SF 86.** OHC must ensure LEO applicants complete a SF 86, Questionnaire for National Security Positions. OHC will then review the applicants' responses to the Lautenberg questions in the police record section of the SF 86 to determine whether, based on their responses, they are eligible for employment with ICE as a LEO.

- 2) **Completed SF 86 with Negative Information.** If a LEO applicant admits conviction of a crime that would make him or her ineligible for employment as a LEO under the Lautenberg Amendment, OHC will advise the applicant that he or she cannot receive further consideration for employment as a LEO with ICE.

5.2. Procedures for Employees.

- 1) **Annual Certification.** During their annual performance review, all ICE LEOs must complete a Lautenberg Certification Form and turn it in to their supervisor.
- 2) **Notification to Supervisor or Other Official.** If arrested for a crime of domestic violence, an ICE LEO must promptly do the following:
 - a) Report the arrest to his or her first-line supervisor;
 - b) Notify OPR in accordance with ICE Directive 17001.1 (formerly 6-1.0), "Functions of the Office of Professional Responsibility," which requires the employee to call the Joint Intake Center (877-2INTAKE) or contact the local OPR office that covers the area where the arrest occurred; and
 - c) Surrender any ICE-issued firearms, ammunition, other ordnance and munitions, intermediate use of force devices, related use of force equipment, and other designated equipment or items to include the badge and credential to his or her supervisor.

5.3. Procedures for Supervisors.

- 1) **Annual Certification.** At the annual performance review, supervisors will provide employees with the Lautenberg fact sheet and Lautenberg Certification Form and, after certification by their employees, forward the completed forms to their responsible official for retention.
- 2) **Supervisory Notifications.** Once informed of a LEO's arrest for domestic violence, the first-line supervisor must notify his or her responsible official and confirm that the subordinate informed OPR of the arrest.
- 3) **Supervisory Control of Firearms and Ammunition.** When an ICE LEO is arrested for a misdemeanor crime of domestic violence, the supervisor must inform the LEO that he or she is not permitted to possess or carry ICE-issued firearms, ammunition, other ordnance and munitions, intermediate use of force devices, related use of force equipment, and other designated equipment or items to include the badge and credential; that the LEO must comply with the firearms and ammunition possession laws of the jurisdiction where he or she resides; and that he or she is subject to suspension from ICE law enforcement duties. The supervisor will gain custody of the ICE-issued firearms, ammunition, other ordnance and munitions, intermediate use of

force devices, related use of force equipment, and other designated equipment or items to include the badge and credential, and immediately turn these items over to the responsible SFI for storage pending final disposition of the incident (unless retained by the arresting agency for evidentiary purposes), to include any internal ICE inquiry, DHS Office of Inspector General investigation, or ICE OPR investigation.

- 4) **Return of Firearms, Ammunition, and Related Use of Force Equipment.** The supervisor will return any ICE-issued firearms, ammunition, other ordnance and munitions, intermediate use of force devices, related use of force equipment, and other designated equipment or items to include the badge and credential to the LEO only after acceptable proof is provided to the LEO's supervisor and appropriate OPR official that the matter was legally resolved without a conviction as defined above.
6. **Recordkeeping.** Records generated as a result of this directive will be stored and maintained by OHC and the responsible official in accordance with approved National Archives and Records Administration records schedules. OHC and responsible officials shall retain records pertaining to the Lautenberg Amendment review of an applicant or employee as part of the application reject file, or eOPF, as appropriate. Confidential suitability files and any related criminal record will be maintained by the PSU.
7. **Authorities/References.**
 - 7.1. 18 U.S.C., Chapter 44, the Federal Gun Control Act of 1968.
 - 7.2. 18 U.S.C. §§ 921, 922(g) (9), and 925(a) (1).
 - 7.3. *United States v. Hayes*, 555 U.S. 415, 129 S.Ct. 1079 (2009), holding that Lautenberg applies to all convictions of misdemeanor crimes involving the use or attempted use of physical force, or the threatened use of a deadly weapon, violence or attempted violence, where the underlying facts establish a domestic relationship between the defendant and victim regardless of whether the domestic relationship is an element of the offense for which the defendant has been convicted.
 - 7.4. 19 U.S.C. § 1589a.
 - 7.5. 8 U.S.C. § 1357.
 - 7.6. Omnibus Consolidated Appropriations Act of 1997, Pub. L. 104-208.
 - 7.7. ICE Policy 19002.1, "Interim ICE Firearms Policy," dated July 7, 2004.
 - 7.8. ICE Directive 17001.1 (formerly 6-1.0), "Functions of the Office of Professional Responsibility," dated February 3, 2005.
 - 7.9. ICE Directive 3002.1, "ICE Badge and Credential Program," dated January 12, 2010.

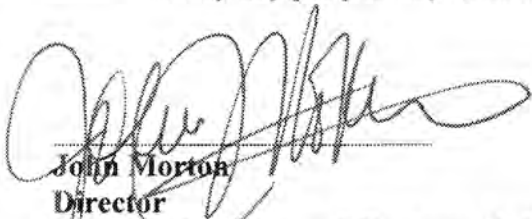
- 7.10. ICE Memorandum from Deputy Director Peña, "Directing Complaints Appropriately to the Joint Intake Center, the Office of Professional Responsibility, the Office of the Inspector General, or Local Management," dated November 10, 2010.

8. **Attachments.**

8.1. Lautenberg Fact Sheet

8.2. Lautenberg Certification Form

9. **No Private Right.** These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.



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U.S. Immigration and Customs Enforcement

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

LAUTENBERG CERTIFICATION

Directions: You must complete PART I and PART II of this form. You should review the statute and the accompanying fact sheet before completing the inquiry.

PART I. Inquiry

Have you ever been convicted of a misdemeanor crime of domestic violence within the meaning of 18 U.S.C. § 922(g)(9)?

Initial and date: ☐ YES ☐ NO

If you answered "NO," skip to PART II of the form. If you answered "YES," you should review the fact sheet before providing the information requested below and completing PART II of the form.

Court/Jurisdiction: _____

Docket/Case Number: _____

Statute/Charge: _____

Date Sentenced: _____

PART II. Certification

I hereby certify that, to the best of my knowledge and belief, all of the information provided by me is true, correct, complete and made in good faith. I understand that a false statement on any part of this inquiry may be grounds for firing me. False or fraudulent information provided herein is also criminally punishable pursuant to federal law, including 18 U.S.C. § 1001.

Print Name _____
(Last) (First) (Middle)

Signature _____ Date _____

Last four digits of Social Security Number xxx-xx-_____

Privacy Statement

Authority and Purpose: ICE is collecting this information to assess your eligibility to possess or receive firearms or ammunition as an ICE law enforcement officer. Collection of this information is necessary to ensure ICE complies with 18 U.S.C. § 922(g)(9), which prohibits individuals convicted in any court of a misdemeanor crime of domestic violence from possessing a firearm or ammunition that has been shipped or transported in interstate or foreign commerce. The last four digits of your Social Security Number are requested in order to identify you and ensure that this form is maintained in the correct personnel file. The authority for collection of this information is 18 U.S.C. § 922.

Disclosure: Furnishing this information is mandatory. For current law enforcement officers, failure to provide this information will result in loss of eligibility to carry a firearm and may result in disciplinary action up to and including removal from a law enforcement officer position.

Routine Uses: This information will be used within ICE to confirm that current law enforcement officers are not barred from carrying a firearm.