

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

OFFICE OF PRIMARY INTEREST: OFFICE OF THE CHIEF HUMAN CAPITAL OFFICER

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SUPERSEDES:	See Section 3

DIRECTIVE TITLE: Domestic Violence: Lautenberg Amendment Compliance Policy

1. **PURPOSE and SCOPE.** This Directive establishes U.S. Immigration and Customs Enforcement (ICE) policy for ensuring that applicants for ICE law enforcement officer positions and individuals who are currently employed by ICE as law enforcement officers are aware of the provisions of the Lautenberg Amendment. ICE Human Resources Officials are responsible for ensuring that ICE law enforcement applicants and current ICE law enforcement officers comply with provisions of Title 18, United States Code Section 922(g)(9) (hereinafter referred to as the "Lautenberg Amendment").
2. **AUTHORITIES/REFERENCES.**
 - Title 18, United States Code, Sections 921 and 922 (g)(9)
 - Title 18, United States Code, Section 925(a)(1)
 - Federal Gun Control Act of 1968 (FGCA)
 - Omnibus Consolidated Appropriations Act of 1997
 - ICE Policy entitled "Interim ICE Firearms Policy"
 - ICE Policy entitled "Functions of the Office of Professional Responsibility"
3. **SUPERSEDED/CANCELLED POLICY/SUMMARY OF CHANGES.** This Directive supersedes previously recognized processes and guidance issued by ICE Program Offices on this subject. It is the originating and establishing Directive for ICE policy regarding persons convicted of a crime of domestic violence and their ability to obtain or remain in a law enforcement officer position in light of the Lautenberg Amendment. Effective with this policy, all current and previous policies on this matter are hereby rescinded and replaced by this centralized ICE policy document.
4. **BACKGROUND.** 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 or agents, and applies to persons convicted at any time prior to or after the passage of the legislation on September 30, 1996. The Lautenberg Amendment renders individuals who have been convicted of a crime of domestic violence ineligible for employment as an ICE law enforcement officer. (See Gillespie v. City of Indianapolis, 185 F.3d 693)

(7th Cir. 1999), cert denied, 528 U.S. 1116 (2000)). 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.

ICE law enforcement officers must be qualified to carry firearms as a condition of employment. ICE law enforcement officers and supervisors are often called upon to respond to crisis situations requiring a swift action and the ability to use all available resources, including various types of firearms. It is essential that ICE management be free to deploy ICE law enforcement personnel anywhere within the United States without violating federal law.

5. DEFINITIONS.

- 5.1. **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. §922(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 Title 18 USC § 921(a)(33)(B)).
- 5.2. **Lautenberg Amendment** refers to Title 18, United States Code, Section 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.
- 5.3. **Lautenberg Certification Form:** The certification form used to attest whether an applicant has been convicted of a misdemeanor crime of domestic violence as defined in the statute, which captures the applicant's signature, acknowledging that the applicant is aware of and understands the Lautenberg Amendment's provisions.
- 5.4. **Lautenberg Amendment Fact Sheet:** An information fact sheet provided to all ICE law enforcement officer applicants and current ICE law enforcement officers, highlighting issues involving the Lautenberg Amendment.
- 5.5. **Law Enforcement 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 as defined in Part I, Section B of the Interim ICE Firearms Policy.
- 5.6. **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, 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)).
- 5.7. **Without A Conviction:** The conviction 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 Title 18 USC § 921(a)(33)(B)(ii)).

6. POLICY.

- 6.1. Human Resources Officials (HROs) must provide a Lautenberg Fact Sheet and Lautenberg Certification form to ICE law enforcement applicants and current ICE law enforcement officers. ICE HROs must properly maintain the Lautenberg Certification form.
- 6.2. HROs must include in vacancy announcements for positions authorizing the carriage of a firearm language describing the Lautenberg Amendment provisions and responsibilities.
- 6.3. All applicants for law enforcement positions with ICE must complete a certification form that informs the applicant of the provisions of the Lautenberg Amendment.
- 6.4. All ICE law enforcement officers shall be required to submit an updated Lautenberg Amendment Certification during their annual performance review. The original document shall be made part of the employee's permanent ICE record.
- 6.5. If an ICE law enforcement applicant or law enforcement officer fails to complete or improperly completes the Lautenberg Certification, the HRO must advise the individual that he or she cannot be considered for employment, or remain employed, as a law enforcement officer unless or until the law enforcement officer or applicant properly completes the form.
- 6.6. All law enforcement officer applicants and current law enforcement officers who are **arrested or convicted** of a felony or misdemeanor crime of domestic violence must promptly report this information to the following officials:
 - his or her immediate supervisor; and
 - an Office of Professional Responsibility (OPR) official at the Joint Intake Center (877-2INTAKE), or at the local OPR Office that covers the area where the arrest occurred.
- 6.7. Pending disposition of the case, ICE law enforcement officers are not permitted to possess or carry firearms or ammunition and are subject to termination from ICE law enforcement officer positions (see "Interim ICE Firearms Policy," Part I, Section J).
- 6.8. Any ICE law enforcement officer applicant who has been convicted of a crime of domestic violence shall not be considered for employment as a law enforcement officer with ICE.
- 6.9. Any ICE law enforcement officer convicted of a crime of domestic violence will be terminated from a law enforcement position.

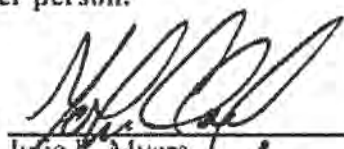
7. RESPONSIBILITIES.

- 7.1. Human Resource Officials (HROs) – HROs will include Lautenberg Amendment-related language in law enforcement position announcements, ensure ICE law enforcement applicants and officers receive a Lautenberg Amendment Certification, advise the applicant when the certification is not correctly completed, and properly maintain all completed certifications until the time for its proper disposal or transfer to the appropriate personnel security officials. In addition, ICE HROs shall:

- A. Request suitability investigations, via the OPR, in cases where there is reason to believe an applicant or employee has submitted a fraudulent Lautenberg Amendment Certification;
 - B. Develop and maintain a centralized database of disqualified applicants;
 - C. Retain all application materials pertaining to the Lautenberg Amendment Certifications and any related criminal record as part of the application reject file and/or confidential suitability file and/or permanent employee file;
 - D. Retain applicant records for a minimum of two years after the date of last action taken on application; and
 - E. Ensure that all ICE program offices are in full compliance with the provisions of Title 18, U.S.C. § 922(g)(9), The Lautenberg Amendment.
- 7.2. Supervisory Law Enforcement Officers** – Once notified that a subordinate has been arrested for a misdemeanor crime of domestic violence, the supervisor must inform his or her supervisor of the arrest, confirm that the subordinate informed OPR of the arrest, and initiate the process to obtain the officer's firearm(s) and related items. The appropriate ICE law enforcement supervisor is responsible for ensuring that all ICE-issued firearm(s), weapon(s), ammunition, and other related items are immediately turned over to the responsible Senior Firearms Instructor for storage pending final disposition of the incident, to include any internal ICE inquiry, Department of Homeland Security Office of Inspector General (OIG) investigation, or ICE OPR investigation (see Interim ICE Firearms Policy, Part I, Section J.3.). The firearm(s) and ammunition should be returned to the law enforcement officer only if acceptable proof that the matter was legally resolved without a conviction as defined above is provided to the law enforcement officer's supervisor and appropriate OPR official. The appropriate ICE law enforcement supervisor is also responsible for informing the law enforcement officer that he or she is not permitted to possess or carry a firearm or ammunition, must comply with the laws of the jurisdiction where he or she resides, and cannot perform law enforcement duties (see Interim ICE Firearms Policy, Part I, Section J.3.).
- 8. PROCEDURES.**
- 8.1. Processing for Applicants** – HROs must perform the procedures described below for applicants seeking employment with ICE as law enforcement officers.
- 8.1.1. Requesting Completion of Certification** – HROs will provide law enforcement applicants with the "Lautenberg Fact Sheet" and "Lautenberg Certification" form during the screening process and before any offer of employment is made.
- 8.1.2. Incomplete or Improperly Completed Certifications** – If a law enforcement applicant fails to complete the certification, or improperly completes it, the HRO must advise the applicant that he or she cannot be considered for employment as a law enforcement officer with ICE unless the form is correctly completed.
- 8.1.3. Completed Certifications with Negative Information** – If a law enforcement applicant admits conviction of a crime that would make him or her ineligible for employment as a law enforcement officer under the Lautenberg Amendment, the HRO will advise the applicant that he or she cannot be considered for employment as a law enforcement officer with ICE.

- 8.2. Processing for Employees** – The ICE law enforcement officer, supervisor, and appropriate ICE OPR officials must perform the procedures described below after an ICE law enforcement officer has been arrested for a crime of domestic violence.
- 8.2.1. Notification to Supervisor or Other Official** – If arrested for a crime of domestic violence, an ICE law enforcement officer must promptly do the following:
1. Report this arrest to his or her immediate supervisor.
 2. Notify OPR in accordance with the procedures in Section 6.3. of ICE Policy entitled, "Functions of the Office of Professional Responsibility," which requires the employee to call the Joint Intake Center at 877-2INTAKE or contact the local OPR Office that covers the area where the arrest occurred.
 3. Surrender any Government-issued firearm(s) or ammunition to his or her supervisor.
- 8.2.2. Supervisory Control of Firearms and Ammunition** – When an ICE law enforcement officer is arrested for a crime of domestic violence, the supervisor will gain custody of any ICE-issued firearm(s), weapon(s), ammunition, and other related items, and immediately turn these items over to the responsible Senior Firearms Instructor for storage pending final disposition of the incident, to include any internal ICE inquiry, DHS OIG investigation, or ICE OPR investigation (see Interim ICE Firearms Policy, Part 1, Section J.3).
- 8.2.3. Supervisory Notifications** – Once informed of a law enforcement officer's arrest for domestic violence, the supervisor must also notify his or her supervisor and confirm that the subordinate informed OPR of the arrest. The supervisor is also responsible for informing the law enforcement officer that he or she is not permitted to possess or carry firearms or ammunition, must comply with the firearms and ammunition possession laws of the jurisdiction where he or she resides, and is subject to suspension from ICE law enforcement duties (see Interim ICE Firearms Policy, Part 1, Section J.3).
- 8.2.4. Return of Firearms and Ammunition** – The supervisor will return any firearm(s) and ammunition to the previously arrested law enforcement officer only after acceptable proof that the matter was legally resolved without a conviction as defined above is provided to the law enforcement officer's supervisor and appropriate OPR official.
- 9. ATTACHMENTS.** "Lautenberg Fact Sheet," "Lautenberg Certification," and "Vacancy Announcement Statement for Positions Authorizing the Carriage of a Firearm."
- 10. NO PRIVATE RIGHT STATEMENT.** This Directive is an internal policy statement of ICE. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

Approved: _____


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