

Civil Immigration Arrests Pursuant to an Administrative Warrant

Only specified categories of supervisory immigration officers within ICE have been delegated the authority to issue Form 200 for the arrest of an alien when there is probable cause to believe the alien is present in the United States in violation of the immigration laws or is otherwise removable from the United States. As delineated in the regulations within ICE, Forms 200 may only be issued by supervisory detention and deportation officers supervisory special agents or their superiors. Although ICE immigration officers also possess warrantless arrest authority for civil violations of the immigration laws as discussed below such authority is not without limits. Accordingly ICE immigration officers are required to ensure civil immigration arrest warrants are issued for all target aliens prior to conducting targeted arrest operations. Despite this requirement it is without doubt that ICE immigration officers will encounter additional aliens present in violation of the immigration laws or otherwise removable during at large operations. In that case immigration officers must immediately determine whether an administrative warrant can be timely obtained. If an authorized supervisory immigration officer is present or otherwise accessible he or she may immediately issue Form 200 if probable cause of removability is established. If no supervisor is available to issue an administrative warrant or supervisor cannot timely issue an administrative warrant then the officer or agent must consider whether warrantless immigration arrest is permissible.

Officers and agents are reminded that they are empowered to detain and conduct a brief investigative stop of any person that is reasonably suspected to be engaged in an offense against the laws of the United States or unlawfully present in the United States.

Warrantless Civil Immigration Arrests

The immigration laws authorize immigration officers to effectuate civil immigration arrests without warrant where there is probable cause to believe that the subject is removable alien and the subject is likely to escape before warrant for his arrest can be obtained.

These determinations must be made before warrantless arrest is effectuated.

The phrase "likely to escape" is not specifically defined in the statute or implementing

Regulations. The plain meaning of that phrase which is reinforced by context is that an alien is "likely to escape" if an immigration officer determines he or she is unlikely to be located at the scene of the encounter or another clearly identifiable location once an administrative warrant is obtained. The word "escape" indicates immediacy and the plain meaning of the

word is to getaway as by flight. Whether an alien is likely to remain at the scene of the encounter is based on the totality of the circumstances known to the immigration officer at the time of the encounter and prior to the arrest. Possible factors include but are not limited to

- The subject's behavior prior to and during the encounter e.g. refusal to follow lawful commands attempts to evade officers or other suspicious behavior prior to the arrest
- The subject's ability and means to promptly depart the scene of the encounter e.g. the subject was encountered in vehicle and continues to have control over the vehicle.
- Possession of identity or work authorization documents that the immigration officer suspects are fraudulent