

## § 287.2

## 8 CFR Ch. I (1–1–08 Edition)

has been informed of the charges and the right to counsel.

(e) *Law enforcement or other official.* The phrase *law enforcement official (or other official)*, as used in section 287(d) of the Act, means an officer or employee of an agency engaged in the administration of criminal justice pursuant to statute or executive order, including (1) courts; (2) a government agency or component which performs the administration of criminal justice as defined in 28 CFR part 20 including performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

(f) *Controlled substance.* The term *controlled substance*, as used in section 287(d)(3) of the Act, shall mean the same as that referenced in the Controlled Substances Act, 21 U.S.C. 801 *et seq.*, and shall include any substance contained in Schedules I through V of 21 CFR 1308.1 *et seq.* For the purposes of this chapter, the term *controlled substance* includes controlled substance analogues as defined in 21 U.S.C. 802(23) and 813.

(g) *Basic immigration law enforcement training.* The phrase basic immigration law enforcement training, as used in §§ 287.5 and 287.8, means the successful completion of one of the following courses of training provided at the Immigration Officer Academy or Border Patrol Academy: Immigration Officer Basic Training Course after 1971; Border Patrol Basic Training Course after 1950; Immigration Detention Enforcement Officer Basic Training Course after 1977; and Immigration Customs Enforcement Special Agent Training, after 2002; or training substantially equivalent thereto as determined by the Commissioner of CBP or the Assistant Secretary for ICE with respect to personnel in their respective bureaus. The phrase basic immigration law enforcement training also means the successful completion of the Other than Permanent Full-Time (OTP) Immigration Inspector Basic Training Course after 1991 in the case of individuals who are OTP immigration inspectors. Conversion by OTP immigration to any

other status requires training applicable to that position.

(h) References to specific titles of officers mean all individuals holding such positions and any individual acting in such position.

(i) Nothing in this part limits the authority of any DHS officers to act pursuant to any authorities that they may otherwise possess.

[22 FR 9808, Dec. 6, 1957, as amended at 29 FR 13244, Sept. 24, 1964; 53 FR 9283, Mar. 22, 1988; 57 FR 47258, Oct. 15, 1992; 59 FR 42415, Aug. 17, 1994; 68 FR 35276, June 13, 2003]

### § 287.2 Disposition of criminal cases.

Whenever a special agent in charge, port director, or chief patrol agent has reason to believe that there has been a violation punishable under any criminal provision of the immigration and nationality laws administered or enforced by the Department, he or she shall immediately initiate an investigation to determine all the pertinent facts and circumstances and shall take such further action as he or she deems necessary. In no case shall this investigation prejudice the right of an arrested person to be taken without unnecessary delay before a United States magistrate judge, a United States district judge, or, if necessary, a judicial officer empowered in accordance with 18 U.S.C. 3041 to commit persons charged with offenses against the laws of the United States.

[59 FR 42415, Aug. 17, 1994, as amended at 68 FR 35276, June 13, 2003]

### § 287.3 Disposition of cases of aliens arrested without warrant.

(a) *Examination.* An alien arrested without a warrant of arrest under the authority contained in section 287(a)(2) of the Act will be examined by an officer other than the arresting officer. If no other qualified officer is readily available and the taking of the alien before another officer would entail unnecessary delay, the arresting officer, if the conduct of such examination is a part of the duties assigned to him or her, may examine the alien.

(b) *Determination of proceedings.* If the examining officer is satisfied that there is prima facie evidence that the arrested alien was entering, attempting to enter, or is present in the United