

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Tuesday, June 29, 2010 1:48 PM
To: (b)(6), (b)(7)(C) DRO Taskings
Cc: (b)(6), (b)(7)(C)
Subject: RE: Deferred Action

Just to confirm - will you be able to get the rest by Monday, July 12th?

From: (b)(6), (b)(7)(C)
Sent: Tuesday, June 29, 2010 1:44 PM
To: (b)(6), (b)(7)(C) DRO Taskings
Cc: (b)(6), (b)(7)(C)
Subject: RE: Deferred Action

Looking at the questions we will not be able the following-

1. Number within (1) for each year that included work authorization- should go to CIS
 - a. Number within (1) for each year who were military spouses
 - b. Number within (1) for each year who were students
 - c. Number within (1) for each year who were in the US for medical treatment

(b)(7)(C)
Acting Chief of Staff
Office of the Director
Enforcement & Removal Operations
Work (202) 732- (b)(6)
Fax (202) 732-3115 (b)(6)

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From: (b)(6), (b)(7)(C)
Sent: Tuesday, June 29, 2010 1:07 PM
To: (b)(6), (b)(7)(C) DRO Taskings
Cc: (b)(6), (b)(7)(C)
Subject: FW: Deferred Action
Importance: High

Hi (b)(6), (b)(7)(C)
Unfortunately, I spoke too soon. The House came back, email below, and must have the information below, plus more, by no later than Monday, July 12th.
Will you be able to gain the information requested by the necessary date?
Thanks,
(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C) mailto: (b)(6), (b)(7)(C)
Sent: Tuesday, June 29, 2010 12:00 PM
To: (b)(6), (b)(7)(C)

Subject: Deferred Action

(b) (6), (b) (7)(C) and I discussed the amount of work needed to collect this data. Unfortunately, this is very likely to be an amendment we get at full committee mark-up, which we hope to schedule for the week of July 12. The amendment would be for a blanket prohibition on any DHS funds being used to grant deferred action for any reason.

In order to keep this amendment off the bill, which I assume is ultimately in ICE's best interest, I need some data about how often this happens and how successfully ICE tracks the individuals who are granted the status. At a minimum, I need the following:

2. Total number of "deferred action" decisions granted in FY09 and FY08 [and FY07 if it is not significantly more work].
3. Number within (1) for each year that were granted as part of a broader US law enforcement investigation or prosecution
4. Number within (1) for each year that included work authorization
5. Number within (1) for each year who have subsequently been removed from the country

If it is not significant additional work, it would be nice (but not necessary) to have:

- d. Number within (1) for each year who were military spouses
- e. Number within (1) for each year who were students
- f. Number within (1) for each year who were in the US for medical treatment

Can I please get a commitment from you to get me information no later than COB Monday, July 12? If the Chairman can't cite figures about the reasons and success of deferred action status, it will be very hard to oppose such an amendment.

Please call me to discuss.

Thanks,

(b) (6), (b) (7)(C)
Professional Staff
Subcommittee on Homeland Security
House Committee on Appropriations
202-225- (v)
202-225- (f)

(b)(6), (b)(7)(C)
[REDACTED] (CTR)

From: (b)(6), (b)(7)(C)
Sent: Monday, June 14, 2010 1:52 PM
To: DRO Taskings
Cc: [REDACTED]
Subject: FW: ***DUE at 1500hrs today***FW: Due 14 Jun: Review and Comment (1300: 14 Jun 10): 10062032 | Tasking: Feedback on Proposals from White House Council on Women and Girls

Attachments: Feedback Matrix for Violence Against Women Prevention.doc; Final DHS Submission WHCWG.pdf; CISOMB External Feedback for VAWA T U Visas.doc; PLCY External Feedback for VAWA T U Visas.doc

This is cleared.

Mr. (b)(6), (b)(7)(C)
 Assistant Chief of Staff (A)
 Office of the Executive Associate Director
 Enforcement & Removal Operations
 Work (202) 732-3119
 Fax (202) 732-3119

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From: [REDACTED] On Behalf Of DRO Taskings
Sent: Monday, June 14, 2010 1:34 PM
To: [REDACTED]
Cc: DRO Taskings
Subject: ***DUE at 1500hrs today***FW: Due 14 Jun: Review and Comment (1300: 14 Jun 10): 10062032 | Tasking: Feedback on Proposals from White House Council on Women and Girls

*****DUE at 1500hrs today*****

Mr. (b)(6), (b)(7)(C)

Request:

Please provide comments in the attached comment matrix on ICE program progress on the VAWA/T/U proposal from the White House Council on Women and Girls.

Note: Please pay careful attention to proposals 16, 17, 18, 19.

Response:

DRO has reviewed and provide no comment.

Cleared by IPC.

(b)(6), (b)(7)(C)
[REDACTED]

Taskings & Correspondence Unit
Enforcement and Removal Operations
Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street SW | Washington, DC 20024 | 202-732- (b)(6), (b)(7)(C)

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From: (b)(6), (b)(7)(C)
Sent: Monday, June 14, 2010 12:48 PM
To: DRO Taskings
Cc: (b)(6), (b)(7)(C)
Subject: FW: Due 14 Jun: Review and Comment (1300: 14 Jun 10): 10062032 | Tasking: Feedback on Proposals from White House Council on Women and Girls

DRO-Taskings,

IPC has no comments.

Thank you,

(b)(6), (b)(7)(C)
Acting C&S
Information, Policy and Communications
Enforcement and Removal Operations
Immigration and Customs Enforcement
202-732- (b)(6), (b)(7)(C)

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From: (b)(6), (b)(7)(C)
Sent: Thursday, June 10, 2010 1:30 PM
To: (b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)
Subject: FW: 10062032 | Tasking: Feedback on Proposals from White House Council on Women and Girls
Importance: High

Hi (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) having computer and blackberry problems. It's due to Marisa by June 14, 2010 at 1700 hrs.

Thanks (b)(6), (b)(7)(C)

7/30/2010

2010FOIA6052.001030

Special Assistant
 Information, Policy and Communications
 Office of Detention and Removal Operations
 (202) 732- [REDACTED]

From: [REDACTED] [mailto:[REDACTED]]@dhs.gov] **On Behalf Of** DRO Taskings
Sent: Thursday, June 10, 2010 11:31 AM
To: [REDACTED]
Cc: DRO Taskings
Subject: 10062032 | Tasking: Feedback on Proposals from White House Council on Women and Girls
Importance: High

Assigned Unit (s): Information, Policy & Communications

From (Requesting Office): ICE Policy

Task Due Date: June 15, 2010 at 1500hrs

DRO Taskings Tracking No.: 10062032

Instructions:

Please provide comments in the attached comment matrix on ICE program progress on the VAWA/T/U proposal from the White House Council on Women and Girls.

Note: Please pay careful attention to proposals 16, 17, 18, 19.

Background:

White House Council on Women and Girls

On March 11, 2009, President Obama signed an [Executive Order creating the White House Council on Women and Girls](#). In his remarks at the signing, the President underscored that the purpose of the Council is "to ensure that each of the agencies in which they're charged takes into account the needs of women and girls in the policies they draft, the programs they create, the legislation they support" and that the true purpose of our government is "to ensure that in America, all things are still possible for all people."

<http://www.whitehouse.gov/administration/eop/cwg/about>

Point of Contact:

[REDACTED]
 Special Assistant on Outreach and Policy
 U.S. Immigration and Customs Enforcement, Office of Policy
 U.S. Department of Homeland Security
 (202) 732- [REDACTED]

[REDACTED]
 Taskings & Correspondence Unit
 Detention and Removal Operations
 Immigration and Customs Enforcement

U.S. Department of Homeland Security
 500 12th Street SW | Washington, DC 20024 | 202-732- (b)(6) (b)(7)(C)

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From: (b)(7)(C)
Sent: Thursday, June 10, 2010 10:32 AM
To: #ICE OI Tasking; DRO Taskings; OIATASKING; (b)(7)(C)
Cc: (b)(6) (b)(7)(C)
Subject: 10062032 | Tasking: Feedback on Proposals from White House Council on Women and Girls
Importance: High

To: OI (to include - D3/HSTU/Victims Assistance Program)
 OIA (to include - Operations and Law Enforcement Parole Branch)
 DRO
 OSLC

From: ICE Policy

Instructions:

Please provide comments in the attached comment matrix on ICE program progress on the VAWA/T/U proposals from the White House Council on Women and Girls.

Attached are the following documents:

1. Feedback Matrix for Violence Against Women Prevention
2. Background on White House Council on Women and Girls
3. Preliminary feedback from external stakeholders provided to the CIS Ombudsman – **Proposals 1 to 15.**
4. Preliminary feedback from external stakeholders provided to the CIS Ombudsman – **Proposals 15 to 26.**

Please review ALL proposals, but program offices please pay careful attention to the following:

OI – 1, 16, 17, 18

DRO – 16, 17, 18, 19

OSLC – 18 (please note whether VAWA issues are noted in the new MOA), 19

OIA – 1, 2, 7

Background:

White House Council on Women and Girls

On March 11, 2009, President Obama signed an [Executive Order creating the White House Council on Women and Girls](#). In his remarks at the signing, the President underscored that the purpose of the Council is "to ensure that each of the agencies in which they're charged takes into account the needs of women and girls in the policies they draft, the programs they create, the legislation they support" and that the true purpose of our government is "to ensure that in America, all things are still possible for all people."

<http://www.whitehouse.gov/administration/eop/cwg/about>

DHS Outreach to Women and Girls

The Department of Homeland Security has fostered various initiatives that focus specifically on reaching out to women and girls. Whether this work is to teach young women how to help their communities prepare for a disaster, to empower immigrant women who have been the victim of crimes, or to enhance female leadership among the Department's workforce, these efforts ultimately serve the best interests not only of the women and girls that they impact, but also our entire nation.

This report is provided as a brief summary and overview of some of the women and girl focused efforts that are currently taking place at the Department.

Please see attached DHS summary and overview of some of the women and girl focused efforts that are currently taking place at the Department.

Tasking POC Information:

(b)(7)(C)
[REDACTED]
Special Assistant on Outreach and Policy
U.S. Immigration and Customs Enforcement, Office of Policy
U.S. Department of Homeland Security

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202-732-[REDACTED] Direct
202-732-4263: Fax
202-465-[REDACTED] BlackBerry
202-431-[REDACTED] Cell

(b)(6), (b)(7)(C)
E-mail: [REDACTED]@dhs.gov

Violence Against Women Prevention – Administration of VAWA/T/U Visa Petitions

DHS Component: _____

Point of contact and phone number: _____

As we discussed on May 27, please take a moment to provide comments on each of the below proposals that external stakeholders provided to DHS. This list is intended to be a starting point for further discussion and consideration. Together, we will evaluate these proposals and determine the steps that each of our components can take to support the larger effort.

This matrix will be used as a tool to coordinate feedback and keep us focused on identifying potential deliverables. In the table below, please comment on each of the proposals as it relates to your component. **When deciding how to categorize your proposals, consider both your existing, planned, or potential efforts.** Additionally, please add any actions that your component is interested in pursuing that we have not discussed yet. The goal is to put together a list of short-term and long-term deliverables for the Department. When we finalize that list, we can share it with the Council on Women and Girls.

Please submit the completed matrix to : (b)(6). @dhs.gov by **COB Friday, June 11.**

Please identify each proposal based on the following categories:

- A. Component has already implemented or is in the process of implementing this proposal or a similar proposal within the next six months.
- B. Component plans to implement this proposal or a similar proposal in the next 7 – 12 months.
- C. This is a long term initiative that the component has interest in.
- D. Component is considering a different approach to the issue raised in the proposal.
- E. Component does not agree that the proposal raises an issue that requires new action.

Proposal 1: Identify policies and safeguards for conducting human trafficking investigations that are, or could be, put in place to protect a victim, witness, or his or her family, who is cooperating with the investigation domestically and abroad.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 2: Establish a uniform fingerprinting process at Consulates.			
<i>Component:</i>	<i>Please identify this proposal as</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>

	A, B, C, D, or E.		
Proposal 3: Establish policy to uniformly allow for extensions of time for derivatives abroad to be fingerprinted and photographed at a U.S. Embassy or Consulate, as applicants and derivatives abroad often require more time than the normally allotted 84 days.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 4: Establish policies that support favorable discretion on timeliness for petitions filed on behalf of U visa derivatives that remain abroad, allowing for more response time. Currently, derivatives aging out when I-918, Supplement A is denied based on untimely receipt of fingerprints and/or photos file a Motion to Reopen or re-file Supplement A. Absent clear procedures from DOS allowing foreign nationals to have their biometrics taken as required by USCIS and absent technology at certain consulates to provide this service further delays applicants and their derivatives to respond to requirements (e.g. the only US consulate for countries in central and southern Caribbean is in Barbados, requiring clients to make travel arrangements, get passports, etc).			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 5: Establish a direct contact at embassies and in local USCIS offices to help resolve special issues with VAWA /T/U cases.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 6: Provide training to frontline staff to ensure that interviews of applicants who have suffered abuse are conducted in a manner that is sensitive to the victim's experience.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>

Proposal 7: Develop policy to address how to extend U visa status for derivatives whose status is either expiring before the applicant can enter or before the applicant can adjust status.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 8: Develop guidance to frontline staff to manage common obstacles that occur due to U visa petitioners without identity documents.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 9: Provide prima facie notices for pending U petitioners.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 10: Develop a uniform standard for adjudicating I-192 waivers.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 11: Clarify whether a medical examination is actually required for adjustment of status.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>

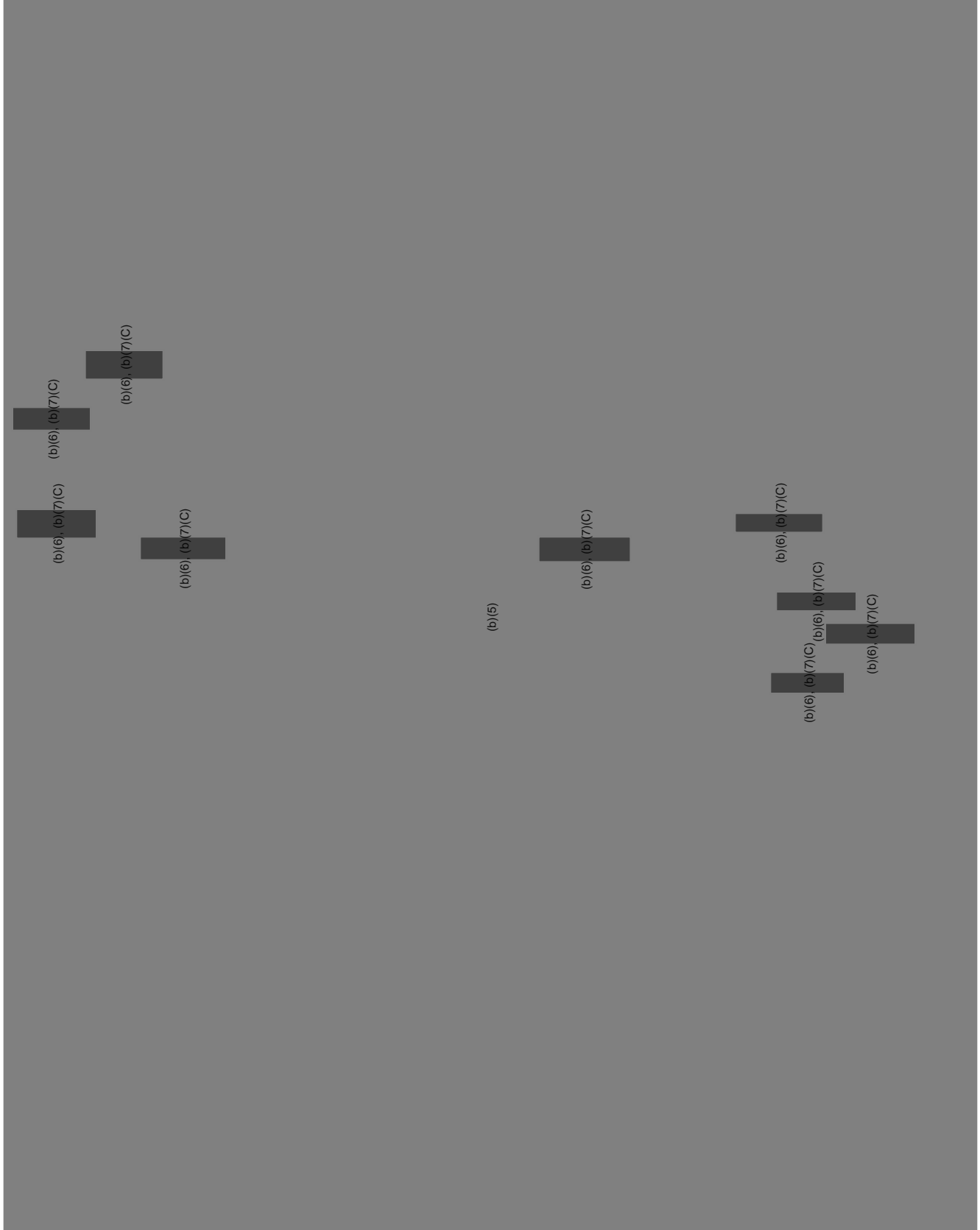
Proposal 12: Provide clarification on the transferability of approved I-192 waivers for VAWA-based adjustment of status to waive grounds of inadmissibility in INA 212(a) in response to an approved VAWA self-petitioner now applying for adjustment of status.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 13: Ensure that all consular staff and/or subcontractors are educated on DOS regulations on U-visas. Despite the issuance of a DOS Cable advising consular officers about the U-visa and providing explanations on the consular processing of these cases, stakeholders continue to encounter consular who are is unfamiliar with the U visa.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 14: Provide guidance to CBP personnel to ensure familiarity with U visas.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 15: Motions to Re-Open—Provide guidance to clarify whether or not applications for adjustment of status filed by approved U petitioners who are subject to exclusion, deportation, or removal orders, will be adjudicated by USCIS (8 CFR 214.14(c)(5)(i) Alien victims of certain qualifying criminal activity).			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 16: Create a “Violence Against Women Coordinator” position in DHS to be responsible for working with DHS components, as well as with DOS, HHS, DOL, and the DOJ Office on Violence Against Women to better address the needs of the VAWA/ T/U visa applicants and holders and the immigrant community the VAWA/T/U provisions are designed to serve.			
<i>Component:</i>	<i>Please identify</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>

	<i>this proposal as A, B, C, D, or E.</i>		
Proposal 17: Enhance DHS data systems to flag cases involving VAWA/T/U petitions.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 18: Develop and implement VAWA/ T/U visa training for key DHS personnel that immigrant crime victims will come in contact with in the context of VAWA/T/ U visa immigration remedies. This training would include information about VAWA/T/U petitions and VAWA confidentiality.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 19: Facilitate transportation to allow immigrant victims in DHS custody to participate in court proceedings where the immigrant victim is an interested party in the proceeding.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 20: Provide guidance to allow VAWA self-petitioners who marry while under the age of 25 the ability to retain their eligibility to self-petition under the same preference category, maintain the priority date, and be permitted to file for derivatives. Under INA 204(a)(1)(D)(v), an alien child who was abused by a USC or LPR before turning 21, but failed to file a self-petition before turning 21 years of age, may still be eligible to self-petition.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 21: Establish guidance or policy to facilitate expedited processing of VAWA self-petitions.			

<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 22: Establish a pre-adjudication process for VAWA self-petitions to allow for work authorization in applications that present a prima facie case.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 23: Establish policy to allow applicants who initially filed based on divorce and then qualified for an adjustment of status through VAWA to switch the basis for the waiver at any time until the final adjudication without having to file a new application.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 24: Establish policy to allow for the inclusion of any time that applicants spend assisting in an investigation or prosecution of a trafficking case before obtaining T status.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 25: Review pending U visa applications under the bona fide standard and issue employment authorization documents to U visa applicants instead of delaying work authorization until final approval of the case.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>
Proposal 26: Provide policy to extend the automatic cancellation of removal orders when a U petition is granted to include removals issued by an			

immigration judge or the Board of Immigration Appeals.			
<i>Component:</i>	<i>Please identify this proposal as A, B, C, D, or E.</i>	<i>Description of current or planned efforts:</i>	<i>Comments:</i>

Preliminary feedback from external stakeholders provided to the CIS Ombudsman



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U.S. Department of Homeland Security
Current Status and Future Goals Report to the
White House Council on Women and Girls

A. Executive Summary

The U.S. Department of Homeland Security's (the Department or DHS) mission is guided by responsibilities to prevent terrorism and enhance security, secure and manage our borders, to enforce and administer our immigration laws, safeguard and secure cyberspace, and ensure resiliency to disasters. Because of the nature of the Department's responsibilities, our work naturally lends itself to focus on the public and our workforce at large.

At the same time, however, the Department has fostered various initiatives that focus specifically on reaching out to women and girls. Whether this work is to teach young women how to help their communities prepare for a disaster, to empower immigrant women who have been the victim of crimes, or to enhance female leadership among the Department's workforce, these efforts ultimately serve the best interests not only of the women and girls that they impact, but also our entire nation.

This report is provided as a brief summary and overview of some of the women and girl focused efforts that are currently taking place at the Department. Overall, based on the missions of this Department and the priorities of Secretary Napolitano, it is clear that DHS has a uniquely critical role to play in an international context for protecting and supporting women and girls who may be victims or targets of crime. Through the critical enforcement and policy arms of DHS components, DHS shares this commitment with interagency, international, and other key partners. In addition, as the agency responsible for working with the State, local, tribal, and territorial governments that prepare our nation's communities to respond to disasters and national incidents, DHS has an obligation to ensure that women and girls are educated and trained to be leaders for preparedness and response within their own families and communities. Furthermore, in furtherance of the goal to build a responsive and unified workforce across components, the Department recognizes the importance of creating professional opportunity for women and girls Department-wide. The Department appreciates the opportunity to conduct this review of our current efforts, and is committed to being a full partner and a leader in moving new initiatives forward.

B. Programs That Improve the Lives of the Federal Workforce

1. Program Descriptions

• **Advancing Female Leadership among the DHS Workforce:** The Department continues to evaluate its workforce and implement strategies to promote professional development and advancement. Components and offices throughout the Department host workshops to support work-life balance, job search skills, Women's History month, and leadership development. For example, the U.S. Coast Guard (USCG) co-hosts the Sea Services Leadership Association Women's Leadership Symposium to foster education and career development, and provide networking and mentoring opportunities for active duty and reserve women in the sea services. The program evaluations of the 2009 program were overwhelmingly positive with 90% of respondents noting they were very satisfied with the program, and 79% noting that the training provided would be beneficial to job performance. This conference is the only event that addresses the needs of women across all ranks and rates in the sea services. The collaboration between the USCG, the Navy, and the Marine Corp is an example of the value in uniting resources to support and advance women across federal departments.

In addition, DHS strives to support women and provide professional development of participants through the agency-wide Annual Women's Leadership Forum. The forum provides leadership training, highlights the importance of mentoring relationships, and facilitates networking opportunities for its presenters and participants. The survey results demonstrated an appreciation for the program with 88% of respondents rating the event as very good or excellent. As an example of the motivation that the event helped stir, one respondent noted an appreciation for "being given tools for personal growth, understanding, and coping," while another noted the significance of "hearing from leaders in the Department."

• **Implementing Strategies to Advance Women in Leadership Roles:** Various Department components maintain Special Emphasis Program Managers including Federal Women's Program Managers to promote the employment and advancement of women within the agency. The DHS Office for Civil Rights and Civil Liberties (CRCL) has supported agency-wide interest in the Federal Women's Program through a Working Group that helps plan and coordinate training, workshops and forums focused on the professional development and advancement of women. CRCL facilitates feedback for the Department's Federal Women's Program through evaluation forms and personal contact. The Federal Women's Program training, forums and workshops are well attended and consistently filled to at least 85% to 90% capacity. As a result of this work and individual leadership among employees, the Department has experienced increased interest in Federal Women's Programs. For example, the Transportation Security Administration (TSA) Federal Women's Program sponsors a Women's Leadership Initiative to promote the recruitment, retention and advancement of women TSA-wide. In addition, the TSA is building a succession planning strategy that is expected to facilitate increased opportunity for women and ultimately impact participation rates of women in TSA professional occupations. Its Career Resident Program is just beginning and is made up of a class that is 50% female.

• **Reaching Out to Partners to Promote Opportunity Within DHS:** Many of the Department's components collaborate with external partners in their efforts to support professional opportunity for women. In 2008, the TSA conducted the Federal Air Marshall Service (FAMS) Barrier Analysis to identify perceived barriers to hiring and retention of female FAMS. Survey data was collected from non-FAMS participants at the 2008 Women in Federal Law Enforcement (WIFLE) Conference. The FAMS also facilitated a focus group of conference attendees to obtain ideas on improving the quality of life for women in the FAMS workplace; and suggestions for increasing opportunities to develop skills and advancement within the organization. Barrier Analysis findings and recommendations are currently being finalized and will identify ways to effectively interest and employ women in the FAMS.. In addition, the U.S. Fire Administration hosts a National Fire Academy Superintendent's annual meeting with Women in Fire Service (WFS) specifically to discuss current issues, needs, and challenges among women fire fighters. Another example of strengthening external relations is the Department's sponsorship of a Pre-Conference DHS Agency Forum and Career Fair during the FEW 40th National Training Program in conjunction with the Federally Employed Women organization. Federally Employed Women (FEW) is a private organization that works as an advocacy group to improve the status of women employed by the Federal government. The goals and objectives of the Preconference are to improve recruitment, retention, and advancement of women in DHS, by showcasing management support, providing education and training, supporting networking opportunities, and encouraging involvement in mentoring opportunities. DHS will also participate in the FEW Conference to provide information on DHS mission critical career opportunities. The partnership has already resulted in increased training opportunities for women, and increased interest in FEW activities. In addition, U.S. Customs and Border Protection (CBP) also has supported participation in the FEW annual conference.

• **Targeting Recruitment and Awareness Efforts:** Many of the Department's components market their employment opportunities at traditionally women's colleges throughout the country and through strategic plans that help them reach more women recruits through key organizations, job fairs and professional events. One example is the Department's strong partnership with Women in Federal Law Enforcement (WIFLE). Numerous Department components participate in WIFLE recruiting events, training, and professional development opportunities.

In addition, the United States Coast Guard Recruiting Command (CGRC) designated 2009 as the Year of the Woman as it set out to recruit diverse leaders to its force. The CGRC developed a team of recruiters to conduct research and explore new strategies to present the exciting challenges and opportunities that lie with the USCG to women. The CGRC is employing recommended strategies, best practices, training & mentoring, partnerships, and advertising in order to increase awareness among women about USCG active duty, reserve, and officer programs. Activities that support recruiting women include partnering with the Women's Professional Soccer league, mentoring young females, coaching girl athletic teams, and assigning a female Lieutenant to meet with women and their families on the day they leave for basic training. The plan also includes the "Year of the Woman" and "Born Ready" advertising campaigns. As an example of the impact of such outreach, the USCG recruited 905 enlisted women, which constitutes 23% of the overall recruiting mission. The result of this focused leadership reflects a 9% increase from FY08.

- **Creating a Pipeline for More Females in the DHS Workforce:** Numerous DHS components utilize the Student Temporary Employment Program (STEP) as an on-the-job training program to allow students to gain exposure to public service while enhancing their educational goals and shaping their career choices. This program has served as an avenue for full-time employment for female students at various components such as the United States Secret Service (Secret Service) and the Federal Law Enforcement Training Center (FLETC).

- **Educating Children of Employees about the Important Work of DHS:** Like many work places, DHS also supports participation in the National Take Your Daughter and Son to Work day. Each year the TSA offers a program that exposes children to security roles and missions, cutting edge technology and detection equipment, and operational aspects of TSA's mission. TSA noted that more than half of their young participants were female, and they developed the program to include a good representation of female and male presenters. U.S. Immigration and Customs Enforcement (ICE) also adds seminars that address internet safety, drug prevention, making good choices, and various homeland security demonstrations. In addition, the Science and Technology Directorate and the Office of Health Affairs jointly hosted a program for the children of their employees to promote an interest in science and technology through various hands-on activities.

- **Collaborating With External Partners at the Local Level:** The Department, through a diverse mix of components, has created meaningful partnerships with a variety of educational and community-based organizations at the local level. For example, the Secret Service partners with Boys and Girls Clubs throughout the country to increase access to technology through the donation of used computer equipment. In addition, CBP and FLETC work with the Explorers Club (which is made of up nearly 40% females) to promote careers in law enforcement. In addition, DHS has been well represented at career day events at schools throughout the country, to promote law enforcement, emergency management and preparedness, and careers in science and technology. DHS components have also partnered with local groups to donate cellular phones to a domestic violence shelter and to assist military families and wives. These relationships are important tools to reach young people, including girls, and offer much needed support to the communities in which our employees serve.

- **Supporting Work-Life Balance through On-site Child Care:** The USCG Development Centers are available to support a work-life balance day in and day out. The purpose of the Child Development Center Program is to provide onsite quality child development programs at an affordable rate to children of Team Coast Guard parents. This critical benefit is already an important part of plans for the department's new headquarters at the St. Elizabeth's Hospital campus.

2. Future Efforts to Improve the Lives of the Federal Workforce Creating an Infrastructure to Support Professional Opportunity for Women in DHS

In an effort to establish consistent support across the agency, the Department is establishing a leadership team to identify issues most critical and particular to women in the Department and to identify capacity-building initiatives that support improved representation of women in DHS overall. The leadership team will be charged with addressing issues including recruitment,

retention, and professional opportunity for women, as well as supporting a positive work/life balance within DHS through issues such as child care. The work of the leadership team will begin with an assessment of the current efforts taking place within DHS to promote and support the advancement of women in these areas, as there is meaningful work already taking place within the Department.

DHS recognizes that enhanced efforts must be made to educate women about opportunities within DHS, particularly because a significant portion of the DHS workforce serves in law enforcement or uniformed services, which are fields that traditionally experience underrepresentation of women overall. Personnel data confirms this, as women currently make up slightly more than one third of the overall DHS workforce. This compares to 44% of the larger Federal workforce who are women.

With this in mind, DHS has much room to improve our outreach efforts to women who may be interested in seeking employment with, or professional development within, DHS. In doing so, the leadership team may work either independently or in conjunction with larger efforts within the Department to promote a diverse workforce and to increase professional advancement opportunity for all underrepresented populations within the DHS workforce.

In order to provide support to the work of the leadership team, a collaborative effort between DHS Federal Women Managers will be simultaneously utilized to provide support and preliminary feedback to the leadership team. These Managers, who have served as leaders on these very issues within their own components, will be an additional resource to the leadership.

C. Programs Which Improves the Lives of Women and Girls

1. Program Descriptions

- **Establishing Preparedness as a Priority for Our Young Female Leaders:** In partnership with the American Legion Auxiliary's Girls State Program, the Federal Emergency Management Administration (FEMA) Community Preparedness Division is in process of developing a Girls State Community Preparedness Program. Girls State is a nonpartisan program that teaches young women responsible citizenship through working with high school girls who have completed their junior year. The Girls State Community Preparedness Program will encourage Girls State Programs across the country to incorporate disaster preparedness and emergency management into the mock governmental roles the girls perform during their time at Girls State. In addition, the Girls State Community Preparedness Program will encourage girls to engage with their own communities by taking their knowledge from the program and working with local community officials to further promote disaster preparedness in their schools and neighborhoods.

- **Building Preparedness Leaders for the Future and Today:** Secretary Napolitano and the Federal Emergency Management Administration (FEMA) recently announced the availability of a new Girl Scouts Preparedness Patch. The Preparedness Patch program encourages Daisies up through Girl Scout Ambassadors to learn about personal disaster preparedness and communitywide involvement in emergency planning, preparedness, mitigation, response and recovery. The patch curriculum was piloted in day camps in the Washington, DC area. Through

August of 2009, 500 girls participated in 45- 60 minutes of emergency preparedness activities each day, totaling approximately 3.75 to 5 hours of emergency preparedness programming per camper each week. The activities are specifically designed to provide the troops with disaster and response knowledge so they can be empowered to protect themselves, their families, and their communities. Secretary Napolitano and Kathy Cloninger, Girl Scouts USA Chief Executive Officer, also signed an agreement formalizing an affiliation between FEMA's Citizen Corps and the Girl Scouts that creates a partnership to motivate young women to become community leaders in emergency management and response fields and raises public awareness about personal preparedness, training and community service opportunities.

- **Providing Resources to Help Parents and Children Be Prepared**

Secretary Napolitano describes individual citizens as our nation's greatest asset against the threats that our homeland faces. As such, DHS is committed to enhancing knowledge and preparedness among families, including mothers and children. In homes across the country, it is often a parent that will ensure that a family is doing all that it can to be prepared for an emergency situation. In recognition of this, DHS created a resource for parents and children through the www.ready.gov website. The messages provide families with important news, updates, and resources for additional information. The goal of this work is to reach families to help them prepare for and respond to a crisis.

- **Empowering Females in Vulnerable Situations:** The United States Citizenship and Immigration Service (USCIS) has developed resources to specifically address victims of human trafficking, domestic violence, and certain other crimes. These programs include the T nonimmigrant visa, the U nonimmigrant visa, and Violence Against Women Act (VAWA) self petitions. Currently, the Department is re-invigorating the process to finalize a new regulation that will provide a much-needed analytical framework for particular social group refugee and asylum claims and, in particular, claims involving domestic violence. A regulation would provide much needed guidance to refugee and asylum applicants, government adjudicators, and immigration lawyers and judges alike, and help provide relief, where appropriate, to victims of domestic violence who come to the United States seeking protection. While these types of immigration relief are not limited to women and girls, reality demonstrates that the crimes and abuse they address do disproportionately affect women and girls. DHS took this leadership a step further in June of 2009 by hosting a two-day training program for adjudicators of T, U and VAWA proceedings. The program included advocacy leaders who shared insight into cultural diversity, legislative history, and obstacles faced by immigrant victims of domestic violence. These are examples of tools that the Department utilizes to contribute to the overall safety and well being of women and girls.

- **Recognizing the Significance of a Journey:** In 1995, the U.S. became the second country in the world to publish guidelines recognizing gender-based persecution as a potential ground for asylum. USCIS regularly updates the Asylum Gender Guidelines and issues the guidelines as a memorandum to all asylum officers adjudicating affirmative asylum claims. The guidelines offer guidance for incorporating gender-sensitive insight into both substantive and procedural aspects of the asylum determination process.

- **Ensuring Women's Access to Redress:** In response to longstanding concerns of nongovernmental immigration, women's rights and civil rights organizations, CRCL recently began to serve as the Department's central point for redress for complaints involving the VAWA and alleged violations of the VAWA confidentiality provisions (at 8 U.S.C. § 1367). In this role, CRCL determines whether allegations implicate VAWA and proactively work to resolve both individual concerns and broader policy issues with DHS component partners.

- **Reducing and Preventing Sex Tourism and Trafficking:** The Department has recognized that young women are vulnerable to sexual exploitation by tourists and that the sex tourism industry fuels human trafficking and child abuse globally, affecting young women and girls in particular. To combat sexual exploitation by American tourists, Immigration and Customs Enforcement (ICE) has launched a variety of programs including Operation Predator, which targets sexual predators and child sex tourists, and the National Child Victim Identification Program which identifies child pornography and aids law enforcement in child rescue. While the program does not track the gender of victims, Operation Predator has facilitated more than 12,000 arrests. In addition, ICE's international attachés work closely with host country law enforcement to stop human trafficking and child exploitation. The Office of International Affairs works regularly with other ICE offices to integrate these programs into the Department's global law enforcement agenda, including through the G8 Lyon-Roma group and in partnership with the European Union's developing program against child exploitation. ICE also unveiled an outdoor public service announcement campaign, "Hidden in Plain Sight," to draw the American public's attention to the plight of human-trafficking victims in the United States. The campaign's goal is to raise public awareness about the existence of human trafficking in communities nationwide, and asks members of the public to take action if they encounter possible victims.

- **Targeting Resources in Times of Disaster:** In response to an emergency, FEMA provides voluntary agency coordination, technical assistance, and reimbursement to jurisdictions for the operation of functional shelters or units that can be used to meet the special needs of fragile elderly adults and women in the later stages of pregnancy. FEMA also contracts with and coordinates non-governmental organizations (i.e. Lutheran Social Services) that offer services specifically for women.

2. Future Efforts to Improve the Lives of Women and Girls

Human Trafficking Mitigation and Education

Secretary Napolitano consistently speaks about the need for a multilayered approach to achieve the mission of the Department. This is especially true when dealing with issues that span borders and governments. The Department's growing cooperation with intergovernmental partners and the international community to combat multinational threats, including human trafficking, is one example of successful relationship building that can help support and protect women and girls who are victims or targets of crime.

Due to the unique responsibilities that DHS carries out every day, the Department frequently encounters victims of human trafficking, the majority of whom are female. DHS components work on a daily basis to combat this crime. To further this work and engage existing and new

partners, DHS takes a multipronged approach to address Human Trafficking. Specifically, the Department is focused on identifying, protecting, investigating, and offering forms of relief for victims of human trafficking and related crimes against women and girls. For an issue as complex and far-reaching as human trafficking, a common language and framework is paramount to linking the wide range of governmental and nongovernmental partners who have been tackling various elements of the same problem. The Department is developing a DHS-wide strategic framework that strengthens support and training for law enforcement, increases education to victims and targets, and implements measures to increase coordination with partners both within and outside of DHS to reduce the occurrence of human trafficking.

In order to further strengthen the ability to prevent and enforce crimes related to human trafficking, and to support victims or targets, DHS Components are working together to develop enhanced training to reflect the specific needs associated with women and children victims of human trafficking. Specifically, along the borders, DHS can facilitate collaboration and action among border-states and the DHS workforce. Ultimately, DHS must be at the forefront in partnering with organizations and leaders across the country and the world to develop solutions and take action to end human trafficking and violent crime targeted at women and girls. With leadership from the USCIS, the Office of the Secretary, FLETC, ICE, CBP, the Office of Policy, and others, DHS is committed to carrying out this responsibility.

Violence Against Women Mitigation and Education

In addition to crimes of human trafficking, women, children and other individuals also experience other acts of violence and specified crimes that are addressed in the Violence Against Women Act and other federal laws such as the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA). In order to ensure that resources are available to DHS staff about petitions that may support victim protection, as well as facilitate criminal investigations and prosecutions, a new training tool is being developed.

The DHS Office of Civil Rights and Civil Liberties is leading a collaborative effort including USCIS, CBP, ICE, the Citizenship and Immigration Services Ombudsman, the Office of Policy and the Office of General Counsel to develop training that can specifically educate personnel about T and U visas and VAWA self-petitions.

Ensuring that DHS is reaching out to Women Owned Businesses

In an effort to ensure that DHS is reaching out robustly to both female and male entrepreneurs, DHS is creating and implementing a plan to increase education of contracting opportunities to women-owned businesses. In May of 2008, the Committee on Homeland Security in the U.S. House of Representatives issued a report that recommended that the Secretary of Homeland Security remedy weaknesses in small, minority, and disadvantaged business contracting, which often include women-owned businesses. The Department has engaged in many successful strategies to address this. DHS is committed to continuing to progress deliberately and strategically to accomplish this goal. DHS is identifying new strategies to empower and educate women entrepreneurs about the federal contracting marketplace and DHS opportunities. All

components are being asked to recommend enhanced strategies to increase awareness and education among women-owned businesses.

D. Overarching Recommendations

DHS is proud to support women and girls through diverse collaborations throughout the United States and even across international lines. While this report does not provide information about all of the ways that the Department is engaged in advancing women and girls through our work, it does provide some important highlights. Developing this report was, itself, an important tool for DHS to identify and inventory ongoing efforts focused on women and girls. In addition, it provides a chance to identify best practices within our own organization and to look for opportunity to strengthen our methods of assessing and evaluating whether or not a program is successfully meeting its intended purpose.

The mission of the Department of Homeland Security, and each member of the DHS team, is important to enhancing the security of all individuals in our nation. In living out the mission central responsibilities of preventing terrorism and enhancing our security, securing our borders, enforcing and administering immigration laws, safeguarding and securing cyberspace, and strengthening resiliency to disasters, there will continue to be new approaches to keeping our nation safe and secure. As we move forward with these new approaches, Secretary Napolitano and the DHS leadership team will continue to look for meaningful approaches to improve the lives of women and girls as part of the DHS mission to protect the public at large.

(b) (6), (b) (7)(C)
[Redacted]
B(CTR)

From: (b) (6), (b) (7)(C)
Sent: Friday, June 04, 2010 4:07 PM
To: DRO Taskings
Subject: FW: 10062010 | Congressional Request for Information - Guidelines for Identifying Humanitarian Concerns
Follow Up Flag: Follow up
Flag Status: Orange
Attachments: RFI - Guidelines for Identifying Humanitarian Concerns.doc; Guidelines - Identifying Humanitarian Concerns.pdf; 2000-11-17 Exercising prosecutorial discretion.pdf; 11001 1 NFOP_priorities_goals_expectations.pdf; as_prosec_custody_discretion.pdf

This is cleared. Thank you.

From: (b) (6), (b) (7)(C) **On Behalf Of** DRO Taskings
Sent: Friday, June 04, 2010 4:00 PM
To: (b) (6), (b) (7)(C)
Cc: DRO Taskings
Subject: FW: 10062010 | Congressional Request for Information - Guidelines for Identifying Humanitarian Concerns

Hi (b) (6), (b) (7)(C)

Sorry about that, here are the attachments.

Thank you,

(b) (6), (b) (7)(C)
Taskings and Correspondence Unit
Department of Homeland Security
Immigration and Customs Enforcement
Detention and Removal Operations
500 12th Street SW | Washington D.C. 20024
202-732- (b) (6), (b) (7)(C) office | 202-905- (b) (6), (b) (7)(C) Cellular

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From: (b) (6), (b) (7)(C)
Sent: Friday, June 04, 2010 3:52 PM
To: DRO Taskings
Subject: FW: 10062010 | Congressional Request for Information - Guidelines for Identifying Humanitarian Concerns

Please add the attachments mentioned in the response and send back to me. Thanks.

From: (b)(6), (b)(7)(C) On Behalf Of DRO Taskings

Sent: Friday, June 04, 2010 3:40 PM

To: (b)(6), (b)(7)(C)

Cc: DRO Taskings

Subject: FW: 10062010 | Congressional Request for Information - Guidelines for Identifying Humanitarian Concerns

Hi (b)(6), (b)(7)(C)

Please clear the following:

Request:

Please provide a response to the following questions:

Ø Is there a policy in place for humanitarian screening for worksite actions targeting 24 or fewer people, or other non0-worksite actions?

Ø Specifically, what are the protocols ICE officials follow in identifying parents & primary caregivers of minor children-is there a humanitarian screening process for those cases? If so, who performs these screenings?

Response:

Please see the attached.

Cleared by:

Lt (b)(6), (b)(7)(C)

Cleared (a)ADE Archambeault 6/4/10

DRM defers to ADE as the Response Coordination Division (which falls under AD-E) has within it the Operations Coordination Unit. At the time that unit was established, ICE was conducting frequent, large target WSE's. That unit was stood up to be the owner/lead of all aspects of DRO coordination to support WSE's. One of the functions of setting up support for the large scale WSE's was the setting up the humanitarian screening (such as identifying lactating mothers and sole care providers).

DRM has no additional comments or edits

Thank you,

(b)(6), (b)(7)(C)
Taskings and Correspondence Unit
Department of Homeland Security

Immigration and Customs Enforcement
 Detention and Removal Operations
 500 12th Street SW | Washington, D.C. 20024
 202-732- [REDACTED] Office | 202-905- [REDACTED] Cellular

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From: [REDACTED]
Sent: Friday, June 04, 2010 3:26 PM
To: DRO Taskings
Cc: [REDACTED]
Subject: FW: 10062010 | Congressional Request for Information - Guidelines for Identifying Humanitarian Concerns

Please see below response on behalf of IPC:

While not specifically "Humanitarian Screening" – the below could be interpreted as such.

- **DROPPM Chapter 11: Removal Process: Docket Control**

[http://](#) [REDACTED]

(d) Parole. The district director may grant an arriving alien parole from Service custody for urgent **humanitarian** reasons or significant public interest, if the alien demonstrates that he/she does not pose a security risk, is not likely to abscond, and complies with any special conditions, such as posting a bond. (See 8 CFR 212.5.) You must issue any parolee a Form I-94, Arrival Departure Record.

- **DROPPM Chapter 20: Removal Process: Relief From Removal**

[http://](#) [REDACTED]

(1) Deportable Aliens Ordered Removed. When there are compelling **humanitarian factors**, or when a stay is deemed to be in the interest of the government, a District Director may grant a stay of deportation or removal for such period of time and under such conditions as he or she deems necessary.

- **Guidance Governing the S Nonimmigrant Visa** [http://](#) [REDACTED]

All requests for advance parole for aliens who have an S nonimmigrant visa application pending at the Criminal Division or at HQINV are to be submitted by the headquarters office of the LEA directly to HQINV with a letter detailing the purpose for the advance parole request. Approval of these requests are limited to "**urgent humanitarian reasons**" or for operational purposes identified by the LEA (significant public interest)."

- **DROPPM Chapter 15: Removal Process-Final Orders**

[http://\[REDACTED\]](http://[REDACTED])

A non-criminal alien or an alien that is not removable under the sections mentioned above may be released for **humanitarian reasons** on an Order of Supervision. For guidance regarding the release of an alien on an Order of Recognizance prior to a final order, please refer to Chapter 11.

- **Family Unity Benefits and Unlawful Presence** [http://\[REDACTED\]](http://[REDACTED])

Factors to be considered by Service personnel prior to exercising prosecutorial discretion include, among others, **humanitarian concerns** (including family ties in the United States) and whether there is a legal avenue available for the alien to regularize his or her status if not removed from the United States.

- **Discretion in Cases of Extreme or Severe Medical Concern**

[http://\[REDACTED\]](http://[REDACTED])

Aliens Arriving Into DRO Custody

The process for making discretionary decisions is outlined in the attached memorandum of November 7, 2000, entitled "Exercising Prosecutorial Discretion." Field officers are not only authorized by law to exercise discretion within the authority of the agency, but are expected to do so in a judicious manner at all stages of the enforcement process.

In situations where staff must respond to a pickup request or detainer placed against an adult or juvenile alien with a severe medical or psychiatric condition, the Field Office Director (FOD) should weigh the appropriateness of taking that person into federal custody absent a mandatory detention requirement, exceptional concern such as national security, or articulable danger to the community that cannot be addressed by the referring agency. A favorable exercise of discretion should be considered on a case-by-case basis whenever a medical or psychiatric evaluation, diagnosis, treatment plan, or other documentation provided by the referring agency indicates the existence of extreme disease or an impairment that makes detention problematic and/or removal highly unlikely. Exercising prosecutorial discretion when considering whether to accept these types of referrals allows DRO to:

Show compassion and **humanitarian concern**, when appropriate.

Thank you.

[REDACTED]
 Chief of Staff
 Division of Information, Policy & Communications
 Office of Detention and Removal Operations
 Immigration and Customs Enforcement
 U.S. Department of Homeland Security
 500 12th St. SW, Room 2080
 Washington, DC 20024
 (202) 732- [REDACTED] / (202) 329- [REDACTED]

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From: (b)(6) (b)(7)(C)
To: (b)(6) (b)(7)(C) <(b)(6)@dhs.gov>;
Tasking, DIHS: (b)(6) (b)(7)(C) (b)(6) (b)(7)(C)
Cc: DRO Taskings
Sent: Fri Jun 04 08:02:23 2010
Subject: 10062010 | Congressional Request for Information - Guidelines for Identifying Humanitarian Concerns

****Short Turn Around****

Assigned Unit (s): Information, Policy & Communications

DIHS

Enforcement

Detention & Removal Management

From (Requesting Office): OCR

Task Due Date: June 4, 2010 at 1500hrs.

DRO Taskings Tracking No.: 10062010

Instructions:

Please provide a response to the following questions:

- Is there a policy in place for humanitarian screening for worksite actions targeting 24 or fewer people, or other non0-worksite actions?
- Specifically, what are the protocols ICE officials follow in identifying parents & primary caregivers of minor children-is there a humanitarian screening process for those cases? If so, who performs these screenings?

Background:

The policy attached creates a humanitarian screening mechanism for worksite enforcement actions targeting 25 or more persons (the original attached says 150, as you know in 2009 the administration knocked that down to 25+). The guidelines attached set up a process whereby DIHS, state social service agency, or local NGO officials can screen detainees to identify parents.

Point of Contact:

(b)(6), (b)(7)(C)

Office of Congressional Relations

(202)-732- (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Taskings & Correspondence Unit

Detention and Removal Operations

Immigration and Customs Enforcement

U.S. Department of Homeland Security

500 12th Street SW | Washington, DC 20024 | 202-732-(b)(6), (b)(7)(C)

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From: (b)(6), (b)(7)(C)

Sent: Thursday, June 03, 2010 5:45 PM

To: #ICE OI Tasking; DRO Taskings

Subject: 10062010 | Congressional Request for Information - Guidelines for Identifying Humanitarian Concerns

OI and DRO Taskings-

OCR received an email message from the Office of Senator Franken (D-MN) inquiring about ICE policies for identifying humanitarian concerns for worksite enforcement actions targeting 24 or fewer people, or other non-worksite actions. (email attached for reference).

Question: "I was wondering what if any policies are in place for humanitarian screening for worksite actions targeting 24 or fewer people, or other non-worksite actions? Specifically, I'm wondering what protocols ICE officials follow in identifying parents & primary caregivers of minor children—is there a humanitarian screening process for those cases? If so, who performs these screenings?"

Please let me know what policies, if any, your respective programs have in place.

Thank you,

(b)(6), (b)(7)(C)
Department of Homeland Security

U.S. Immigration and Customs Enforcement

Office of Congressional Relations

7/30/2010

2010FOIA6052.001066

202-732- (b)(6), (b)(7)(C) direct)

202-732- (b)(6), (b)(7)(C) main)

202-732-4269 (fax)

<<Guidelines - Identifying Humanitarian Concerns.pdf>>

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)
Administrative Assistant
Thomas Associates, Inc.
Policy Management Unit
Office of Detention and Removal Operations
U.S. Immigration and Customs Enforcement
Phone: (202) 732- (b)(6), (b)(7)(C)
Email: (b)(6), (b)(7)(C)@associates.dhs.gov



Click to visit the DRO Resource Library

- Is there a policy in place for humanitarian screening for worksite actions targeting 24 or fewer people, or other non-worksite actions?
- OI should be the primary POC concerning the “screening” of humanitarian cases during worksite operations. However, during non-worksite enforcement actions, DRO utilizes current policy regarding prosecutorial discretion concerning any and all possible humanitarian issues which may present themselves during an arrest. See the attached memorandum dated November 7, 2007, concerning Prosecutorial Discretion measures, and the November 17, 2000, memorandum. Both memoranda provide guidance on how DRO should handle humanitarian concerns in the field. In the event of a humanitarian issue, DRO officers will determine, based on current policy and guidance, how to proceed. No formal screening is conducted by DIHS officials during routine daily operations.
- There is a policy in place within the Division of Immigration Health Services’ (DIHS) Special Operations Unit as a Standard Operating Procedure utilized for worksite operations. If on-site support from DIHS is not requested by Immigration and Customs Enforcement (ICE) for a population size 25 or less, DIHS provides at a minimum, telephonic support on a case by case basis.
- Specifically, what are the protocols ICE officials follow in identifying parents & primary caregivers of minor children-is there a humanitarian screening process for those cases? If so, who performs these screenings?
- In order to identify parents and primary caregivers, DRO’s National Fugitive Operations Program operates under the current policy as set in place with the December 8, 2009, AS Morton memorandum entitled “National Fugitive Operations Program: Priorities, Goals, and Expectations”. In the policy memorandum, it is stated that Fugitive Operations Teams “Absent extraordinary circumstances should not detain aliens who are physically or mentally ill, disabled, elderly, pregnant, nursing, or the sole caretaker(s) of children or the infirm”. During such operations no formal “screening” by DIHS is conducted, rather Fugitive Operations Teams act in accordance with policy guidance to determine who is a parent and who may be primary caregivers, and make all arrest and custody determinations according to policy after analysis is completed.
- If on site support from DIHS is requested by ICE, Registered Nurses, Physician Assistants, and/or Nurse Practitioners perform the screenings.

Please see below response on behalf of IPC:

While not specifically “Humanitarian Screening” – the below could be interpreted as such.

- **DROPPM Chapter 11: Removal Process: Docket Control**

[http://\[REDACTED\]](http://[REDACTED])

(b)(7)E

(b)(7)e

(d) Parole. The district director may grant an arriving alien parole from Service custody for urgent **humanitarian** reasons or significant public interest, if the alien demonstrates that he/she does not pose a security risk, is not likely to abscond, and complies with any special conditions, such as posting a bond. (See 8 CFR 212.5.) You must issue any parolee a Form I-94, Arrival Departure Record.

- **DROPPM Chapter 20: Removal Process: Relief From Removal**

<http://>

(b)(7)e

(1) Deportable Aliens Ordered Removed. When there are compelling **humanitarian factors**, or when a stay is deemed to be in the interest of the government, a District Director may grant a stay of deportation or removal for such period of time and under such conditions as he or she deems necessary.

- **Guidance Governing the S Nonimmigrant Visa**

<http://>

(b)(7)e

All requests for advance parole for aliens who have an S nonimmigrant visa application pending at the Criminal Division or at HQINV are to be submitted by the headquarters office of the LEA directly to HQINV with a letter detailing the purpose for the advance parole request. Approval of these requests are limited to “**urgent humanitarian reasons** or for operational purposes identified by the LEA (significant public interest).”

- **DROPPM Chapter 15: Removal Process-Final Orders**

<http://>

(b)(7)e

A non-criminal alien or an alien that is not removable under the sections mentioned above may be released for **humanitarian reasons** on an Order of Supervision. For guidance regarding the release of an alien on an Order of Recognizance prior to a final order, please refer to Chapter 11.

- **Family Unity Benefits and Unlawful Presence**

<http://>

(b)(7)e

(b)(7)e

Factors to be considered by Service personnel prior to exercising prosecutorial discretion include, among others, **humanitarian concerns** (including family ties in the United States) and whether there is a legal avenue available for the alien to regularize his or her status if not removed from the United States.

- **Discretion in Cases of Extreme or Severe Medical Concern**

[http://\[REDACTED\]](http://[REDACTED])

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Aliens Arriving Into DRO Custody

The process for making discretionary decisions is outlined in the attached memorandum of November 7, 2000, entitled "Exercising Prosecutorial Discretion." Field officers are not only authorized by law to exercise discretion within the authority of the agency, but are expected to do so in a judicious manner at all stages of the enforcement process.

In situations where staff must respond to a pickup request or detainer placed against an adult or juvenile alien with a severe medical or psychiatric condition, the Field Office Director (FOD) should weigh the appropriateness of taking that person into federal custody absent a mandatory detention requirement, exceptional concern such as national security, or articulable danger to the community that cannot be addressed by the referring agency. A favorable exercise of discretion should be considered on a case-by-case basis whenever a medical or psychiatric evaluation, diagnosis, treatment plan, or other documentation provided by the referring agency indicates the existence of extreme disease or an impairment that makes detention problematic and/or removal highly unlikely. Exercising prosecutorial discretion when considering whether to accept these types of referrals allows DRO to:

Show compassion and **humanitarian concern**, when appropriate.

**Guidelines for Identifying Humanitarian Concerns among Administrative Arrestees
When Conducting Worksite Enforcement Operations**

- Prior to conducting a worksite enforcement operation targeting the arrest of more than 150 persons, ICE should develop a comprehensive plan to identify, at the earliest possible point, any individuals arrested on administrative charges who may be sole care givers or who have other humanitarian concerns, including those with serious medical conditions that require special attention, pregnant women, nursing mothers, parents who are the sole caretakers of minor children or disabled or seriously ill relatives, and parents who are needed to support their spouses in caring for sick or special needs children or relatives. Where practical, at the direction of the Assistant Secretary, ICE will continue to implement these guidelines in all smaller worksite enforcement operations.
- In support of ICE efforts to identify arrestees who should be considered for humanitarian release after processing, ICE should coordinate with the Department of Health and Human Services, Division of Immigration Health Services (DIHS), to provide a sufficient number of personnel to assess the humanitarian needs of arrestees at the ICE processing site.
- DIHS personnel should be given prompt access to all arrestees under safe and humane conditions on the day of the action. To the extent possible, DIHS should be provided access on a rolling basis right after processing of each arrestee. DIHS personnel should be given the time necessary to assess each arrestee's individual circumstances. The purpose of the assessment should be to determine whether the arrestee, the arrestee's children, or other people, including sick or disabled relatives, have been placed at risk as a result of the arrest, based on the illegal activity of the arrestee. To the greatest extent possible, the information provided in the course of such assessments should be used exclusively for humanitarian purposes. DIHS should also inform ICE of any medical issues that might necessitate humanitarian release or additional care. If, during the course of the arrest operation or processing, an emergency medical condition is identified, ICE will ensure that arrestees receive appropriate emergency medical care.
- If DIHS is unable to support an ICE request for a planned worksite enforcement action, ICE should consider coordinating with an appropriate state or local social service agency (SSSA) or utilizing contracted personnel to provide humanitarian screening. If DIHS support for ICE worksite enforcement operations is found not to meet the needs or standards of ICE and such issues cannot be resolved through consultation between ICE and DIHS, then ICE should consider coordinating with an alternative social service agency or utilize contracted personnel.
- In the event DIHS is unable to provide the requested support, ICE should provide advance notice of a planned worksite enforcement operation to the SSSA in the appropriate jurisdiction. In worksite enforcement operations, ICE will consider

This document shall not create or confer any right or benefit on any other person or party, private or public.

whether such coordination is appropriate, without regard to whether DIHS is able to provide the requested support, and will make such coordination whenever possible. While advanced notification to a large number of state social service officials may not be prudent or feasible for every operation, when practicable, ICE should attempt to inform the cabinet-level state official responsible for social services of an impending worksite enforcement action. The notification should be given with sufficient advanced notice to allow the SSSA to identify resources that can support the operation.

- Once the SSSA has been notified, ICE should work with the SSSA to define its role on the day of the enforcement operation, to include proactively screening arrestees for humanitarian concerns. Humanitarian screening should occur at a time and place determined by ICE that minimizes its impact on the law enforcement operation, provided that such screening occur within 12 hours of the enforcement action, or as soon as practical.
- DIHS representatives and any SSSA representatives who have screened arrestees should make recommendations to ICE about individuals who should be released on humanitarian grounds. ICE should promptly take these recommendations into consideration when making determinations about whether arrestees will be released on their own recognizance or through some other alternative to detention. While ICE should take humanitarian issues raised by DIHS or an SSSA into consideration, these concerns will be weighed against other factors, including the arrestee's criminal record, an existing removal order and other factors that would normally mandate detention. It is also understood that aliens who are ordered detained by ICE can seek relief before an Immigration Judge, who can change ICE's detention decision.
- Detainees should not be transferred out of the general area until the above assessments have been completed.
- In addition to coordination with DIHS and the relevant SSSA, when conducting large worksite enforcement operations ICE should provide notification to key area nongovernmental organizations (NGOs) once an operation is underway. ICE should provide the NGOs with the name and contact information of an ICE representative with knowledge of the operation. This notification should be to request that the NGOs assist ICE with identifying any humanitarian issues that are not brought to the attention of ICE.
- As in all ICE law enforcement operations, ICE should provide arrestees with adequate food and water and allow reasonable restroom access. Arrestees will be restrained when operationally necessary in accordance with ICE policy.
- All ICE law enforcement officers receive training and guidance to ensure that individuals are provided access to legal counsel, consistent with principles of due process and fundamental fairness.

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- As in all ICE law enforcement operations, ICE should ensure that all personnel assigned to the operation receive detailed instructions on what steps to take if they encounter individuals with humanitarian concerns.
- In accordance with existing law and procedure, during processing ICE should provide arrestees with oral notice, and written where practical, in their first language of their right to legal counsel and communication with consular officers, along with a list of *pro bono* legal services in the area. As soon as practical after processing, ICE should grant arrestees an opportunity to meet or speak by phone with legal counsel and consular officers. ICE should facilitate all such communication, as well as communication with family members, by providing free and reasonable telephone service.
- As in all ICE law enforcement operations, once ICE determines that an arrestee will be removed, ICE should give the arrestee adequate notice and access (by phone at a minimum) to relatives so that s/he may make plans for dependents. If the family requires assistance from an SSSA, ICE should facilitate contact by providing the arrestee with contact information for the SSSA. ICE should provide the arrestee access via telephone and, where possible, direct visits with the agency at the detention facility.
- As appropriate, if ICE is contacted by an SSSA or an NGO and provided with new information regarding a humanitarian condition after an arrestee has been processed and detained, ICE should facilitate contact between the reporting entity and the arrestee. In compelling cases, ICE may consider the possibility of release on humanitarian grounds based on such newly obtained information.
- In furtherance of efforts to ensure that humanitarian issues are raised with ICE, the agency should staff a dedicated toll free hotline so that relatives seeking information about the location of a family member will have reliable up-to-date information. ICE should publicize the hotline information to the community.

This document shall not create or confer any right or benefit on any other person or party, private or public.

Office of the Assistant Secretary

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

NOV - 7 2007

MEMORANDUM FOR: All Field Office Directors
All Special Agents in Charge

FROM: Julie L. Myers *JLM*
Assistant Secretary

SUBJECT: Prosecutorial and Custody Discretion

This memorandum serves to highlight the importance of exercising prosecutorial discretion when making administrative arrest and custody determinations for aliens who are nursing mothers. The commitment by ICE to facilitate an end to the "catch and release" procedure for illegal aliens does not diminish the responsibility of ICE agents and officers to use discretion in identifying and responding to meritorious health related cases and caregiver issues.

The process for making discretionary decisions is outlined in the attached memorandum of November 7, 2000, entitled "Exercising Prosecutorial Discretion." Field agents and officers are not only authorized by law to exercise discretion within the authority of the agency, but are expected to do so in a judicious manner at all stages of the enforcement process.

For example, in situations where officers are considering taking a nursing mother into custody, the senior ICE field managers should consider:

- Absent any statutory detention requirement or concerns such as national security, threats to public safety or other investigative interests, the nursing mother should be released on an Order of Recognizance or Order of Supervision and the Alternatives to Detention programs should be considered as an additional enforcement tool;
- In situations where ICE has determined, due to one of the above listed concerns or a statutory detention requirement to take a nursing mother into custody, the field personnel should consider placing a mother with her non-U.S. citizen child in the T. Don Hutto or Berks family residential center, provided there are no medical or legal issues that preclude their removal and they meet the placement factors of the facility. For a nursing mother with a U.S. citizen child, the pertinent state social service agencies should be contacted to identify and address any caregiver issues the alien mother might have in order to maintain the unity of the mother and child if the above listed release condition can be met;
- The decision to detain nursing mothers shall be reported through the programs' operational chain of command.

Requests for Headquarters assistance to address arrests and custody determinations as they relate to this issue may be addressed to the appropriate Assistant Director for Operations within OI or DRO.

Attachment

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INS PRESS OFFICE

0002



U.S. Department of Justice
Immigration and Naturalization Service

HQOPP 50/4

Office of the Commissioner

1425 I Street NW
Washington, DC 20536

NOV 7 2000

MEMORANDUM TO REGIONAL DIRECTORS
DISTRICT DIRECTORS
CHIEF PATROL AGENTS
REGIONAL AND DISTRICT COUNSEL

FROM

Doris M. Glasner
Commissioner
Immigration and Naturalization Service

SUBJECT: Exercising Prosecutorial Discretion

Since the 1996 amendments to the Immigration and Nationality Act (INA) which limited the authority of immigration judges to provide relief from removal in many cases, there has been increased attention to the scope and exercise of the Immigration and Naturalization Service's (INS or the Service) prosecutorial discretion. This memorandum describes the principles with which INS exercises prosecutorial discretion and the process to be followed in making and monitoring discretionary decisions. Service officers are not only authorized by law but expected to exercise discretion in a judicious manner at all stages of the enforcement process—from planning investigations to enforcing final orders—subject to their chain of command and to the particular responsibilities and authority applicable to their specific position. In exercising this discretion, officers must take into account the principles described below in order to promote the efficient and effective enforcement of the immigration laws and the interests of justice.

More specific guidance geared to exercising discretion in particular program areas already exists in some instances,¹ and other program-specific guidance will follow separately.

¹ For example, standards and procedures for placing an alien in deferred action status are provided in the Standard Operating Procedures for Enforcement Officers: Arrest, Detention, Processing, and Removal (Standard Operating Procedures), Part X. This memorandum is intended to provide general principles, and does not replace any previous specific guidance provided about particular INS actions, such as "Supplemental Guidelines on the Use of Cooperating Individuals and Confidential Informants Following the Enactment of ISIRIA," dated December 29, 1997. This memorandum is not intended to address every situation in which the exercise of prosecutorial discretion may be appropriate. If INS personnel in the exercise of their duties recognize apparent conflict between any of their specific policy requirements and these general guidelines, they are encouraged to bring the matter to their supervisor's attention, and any conflict between policies should be raised through the appropriate chain of command for resolution.

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INS PRESS OFFICE

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Memorandum for Regional Directors, et al.
 Subject: Exercising Prosecutorial Discretion

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However, INS officers should continue to exercise their prosecutorial discretion in appropriate cases during the period before more specific program guidance is issued.

A statement of principles concerning discretion serves a number of important purposes. As described in the "Principles of Federal Prosecution,"¹ part of the U.S. Attorneys' manual, such principles provide convenient reference points for the process of making prosecutorial decisions; facilitate the task of training new officers in the discharge of their duties; contribute to more effective management of the Government's limited prosecutorial resources by promoting greater consistency among the prosecutorial activities of different offices and between their activities and the INS' law enforcement priorities; make possible better coordination of investigative and prosecutorial activity by enhancing the understanding between the investigative and prosecutorial components; and inform the public of the careful process by which prosecutorial decisions are made.

Legal and Policy Background

"Prosecutorial discretion" is the authority of an agency charged with enforcing a law to decide whether to enforce, or not to enforce, the law against someone. The INS, like other law enforcement agencies, has prosecutorial discretion and exercises it every day. In the immigration context, the term applies not only to the decision to issue, serve, or file a Notice to Appear (NTA), but also to a broad range of other discretionary enforcement decisions, including among others: Focusing investigative resources on particular offenses or conduct; deciding whom to stop, question, and arrest; maintaining an alien in custody; seeking expedited removal or other forms of removal by means other than a removal proceeding; settling or dismissing a proceeding; granting deferred action or staying a final order; agreeing to voluntary departure, withdrawal of an application for admission, or other action in lieu of removing the alien; pursuing an appeal; and executing a removal order.

The "favorable exercise of prosecutorial discretion" means a discretionary decision not to assert the full scope of the INS' enforcement authority as permitted under the law. Such decisions will take different forms, depending on the status of a particular matter, but include decisions such as not issuing an NTA (discussed in more detail below under "Initiating Proceedings"), not detaining an alien placed in proceedings (where discretion remains despite mandatory detention requirements), and approving deferred action.

¹ For this discussion, and much else in this memorandum, we have relied heavily upon the Principles of Federal Prosecution, chapter 9-27.000 in the U.S. Department of Justice's United States Attorneys' Manual (Oct. 1997). There are significant differences, of course, between the role of the U.S. Attorneys' offices in the criminal justice system, and INS responsibilities to enforce the immigration laws, but the general approach to prosecutorial discretion stated in this memorandum reflects that taken by the Principles of Federal Prosecution.

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INS PRESS OFFICE

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Memorandum for Regional Directors, et al.
 Subject: Exercising Prosecutorial Discretion

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Courts recognize that prosecutorial discretion applies in the civil, administrative arena just as it does in criminal law. Moreover, the Supreme Court "has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion." Heckler v. Chaney, 470 U.S. 821, 831 (1985). Both Congress and the Supreme Court have recently reaffirmed that the concept of prosecutorial discretion applies to INS enforcement activities, such as whether to place an individual in deportation proceedings. INA section 242(g); Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471 (1999). The "discretion" in prosecutorial discretion means that prosecutorial decisions are not subject to judicial review or reversal, except in extremely narrow circumstances. Consequently, it is a powerful tool that must be used responsibly.

As a law enforcement agency, the INS generally has prosecutorial discretion within its area of law enforcement responsibility unless that discretion has been clearly limited by statute in a way that goes beyond standard terminology. For example, a statute directing that the INS "shall" remove removable aliens would not be construed by itself to limit prosecutorial discretion, but the specific limitation on releasing certain criminal aliens in section 236(c)(2) of the INA evidences a specific congressional intention to limit discretion not to detain certain criminal aliens in removal proceedings that would otherwise exist. Personnel who are unsure whether the INS has discretion to take a particular action should consult their supervisor and legal counsel to the extent necessary.

It is important to recognize not only what prosecutorial discretion is, but also what it is not. The doctrine of prosecutorial discretion applies to law enforcement decisions whether, and to what extent, to exercise the coercive power of the Government over liberty or property, as authorized by law in cases when individuals have violated the law. Prosecutorial discretion does not apply to affirmative acts of approval, or grants of benefits, under a statute or other applicable law that provides requirements for determining when the approval should be given. For example, the INS has prosecutorial discretion not to place a removable alien in proceedings, but it does not have prosecutorial discretion to approve a naturalization application by an alien who is ineligible for that benefit under the INA.

This distinction is not always an easy, bright-line rule to apply. In many cases, INS decisionmaking involves both a prosecutorial decision to take or not to take enforcement action, such as placing an alien in removal proceedings, and a decision whether or not the alien is substantively eligible for a benefit under the INA. In many cases, benefit decisions involve the exercise of significant discretion which in some cases is not judicially reviewable, but which is not prosecutorial discretion.

Prosecutorial discretion can extend only up to the substantive and jurisdictional limits of the law. It can never justify an action that is illegal under the substantive law pertaining to the

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INS PRESS OFFICE

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Memorandum for Regional Directors, et al.
Subject: Exercising Prosecutorial Discretion

Page 4

conduct, or one that while legal in other contexts, is not within the authority of the agency or officer taking it. Prosecutorial discretion to take an enforcement action does not modify or waive any legal requirements that apply to the action itself. For example, an enforcement decision to focus on certain types of immigration violators for arrest and removal does not mean that the INS may arrest any person without probable cause to do so for an offense within its jurisdiction. Service officers who are in doubt whether a particular action complies with applicable constitutional, statutory, or case law requirements should consult with their supervisor and obtain advice from the district or sector counsel or representative of the Office of General Counsel to the extent necessary.

Finally, exercising prosecutorial discretion does not lessen the INS' commitment to enforce the immigration laws to the best of our ability. It is not an invitation to violate or ignore the law. Rather, it is a means to use the resources we have in a way that best accomplishes our mission of administering and enforcing the immigration laws of the United States.

Principles of Prosecutorial Discretion

Like all law enforcement agencies, the INS has finite resources, and it is not possible to investigate and prosecute all immigration violations. The INS historically has responded to this limitation by setting priorities in order to achieve a variety of goals. These goals include protecting public safety, promoting the integrity of the legal immigration system, and deterring violations of the immigration law.

It is an appropriate exercise of prosecutorial discretion to give priority to investigating, charging, and prosecuting those immigration violations that will have the greatest impact on achieving these goals. The INS has used this principle in the design and execution of its border enforcement strategy, its refocus on criminal smuggling networks, and its concentration on fixing benefit-granting processes to prevent fraud. An agency's focus on maximizing its impact under appropriate principles, rather than devoting resources to cases that will do less to advance these overall interests, is a crucial element in effective law enforcement management.

The Principles of Federal Prosecution governing the conduct of U.S. Attorneys use the concept of a "substantial Federal interest." A U.S. Attorney may properly decline a prosecution if "no substantial Federal interest would be served by prosecution." This principle provides a useful frame of reference for the INS, although applying it presents challenges that differ from those facing a U.S. Attorney. In particular, as immigration is an exclusively Federal responsibility, the option of an adequate alternative remedy under state law is not available. In an immigration case, the interest at stake will always be Federal. Therefore, we must place particular emphasis on the element of substantiality. How important is the Federal interest in the case, as compared to other cases and priorities? That is the overriding question, and answering it requires examining a number of factors that may differ according to the stage of the case.



U.S. Department of Justice
Immigration and Naturalization Service

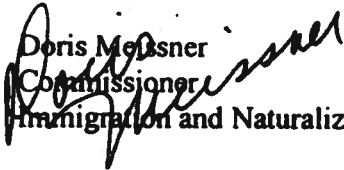
HQOPP 50/4

Office of the Commissioner

425 I Street NW
Washington, DC 20536

NOV 17 2000

MEMORANDUM TO REGIONAL DIRECTORS
DISTRICT DIRECTORS
CHIEF PATROL AGENTS
REGIONAL AND DISTRICT COUNSEL

FROM: 
Doris Meissner
Commissioner
Immigration and Naturalization Service

SUBJECT: Exercising Prosecutorial Discretion

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Subject: Exercising Prosecutorial Discretion

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As a law enforcement agency, the INS generally has prosecutorial discretion within its area of law enforcement responsibility unless that discretion has been clearly limited by statute in a way that goes beyond standard terminology. For example, a statute directing that the INS "shall" remove removable aliens would not be construed by itself to limit prosecutorial discretion, but the specific limitation on releasing certain criminal aliens in section 236(c)(2) of the INA evidences a specific congressional intention to limit discretion not to detain certain criminal aliens in removal proceedings that would otherwise exist. Personnel who are unsure whether the INS has discretion to take a particular action should consult their supervisor and legal counsel to the extent necessary.

It is important to recognize not only what prosecutorial discretion is, but also what it is not. The doctrine of prosecutorial discretion applies to law enforcement decisions whether, and to what extent, to exercise the coercive power of the Government over liberty or property, as authorized by law in cases when individuals have violated the law. Prosecutorial discretion does not apply to affirmative acts of approval, or grants of benefits, under a statute or other applicable law that provides requirements for determining when the approval should be given. For example, the INS has prosecutorial discretion not to place a removable alien in proceedings, but it does not have prosecutorial discretion to approve a naturalization application by an alien who is ineligible for that benefit under the INA.

This distinction is not always an easy, bright-line rule to apply. In many cases, INS decisionmaking involves both a prosecutorial decision to take or not to take enforcement action, such as placing an alien in removal proceedings, and a decision whether or not the alien is substantively eligible for a benefit under the INA. In many cases, benefit decisions involve the exercise of significant discretion which in some cases is not judicially reviewable, but which is not prosecutorial discretion.

Prosecutorial discretion can extend only up to the substantive and jurisdictional limits of the law. It can never justify an action that is illegal under the substantive law pertaining to the

Memorandum for Regional Directors, et al.
Subject: Exercising Prosecutorial Discretion

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Finally, exercising prosecutorial discretion does not lessen the INS' commitment to enforce the immigration laws to the best of our ability. It is not an invitation to violate or ignore the law. Rather, it is a means to use the resources we have in a way that best accomplishes our mission of administering and enforcing the immigration laws of the United States.

Principles of Prosecutorial Discretion

Like all law enforcement agencies, the INS has finite resources, and it is not possible to investigate and prosecute all immigration violations. The INS historically has responded to this limitation by setting priorities in order to achieve a variety of goals. These goals include protecting public safety, promoting the integrity of the legal immigration system, and deterring violations of the immigration law.

It is an appropriate exercise of prosecutorial discretion to give priority to investigating, charging, and prosecuting those immigration violations that will have the greatest impact on achieving these goals. The INS has used this principle in the design and execution of its border enforcement strategy, its refocus on criminal smuggling networks, and its concentration on fixing benefit-granting processes to prevent fraud. An agency's focus on maximizing its impact under appropriate principles, rather than devoting resources to cases that will do less to advance these overall interests, is a crucial element in effective law enforcement management.

The Principles of Federal Prosecution governing the conduct of U.S. Attorneys use the concept of a "substantial Federal interest." A U.S. Attorney may properly decline a prosecution if "*no substantial Federal interest would be served by prosecution.*" This principle provides a useful frame of reference for the INS, although applying it presents challenges that differ from those facing a U.S. Attorney. In particular, as immigration is an exclusively Federal responsibility, the option of an adequate alternative remedy under state law is not available. In an immigration case, the interest at stake will always be Federal. Therefore, we must place particular emphasis on the element of substantiality. How important is the Federal interest in the case, as compared to other cases and priorities? That is the overriding question, and answering it requires examining a number of factors that may differ according to the stage of the case.

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As a general matter, INS officers may decline to prosecute a legally sufficient immigration case if the Federal immigration enforcement interest that would be served by prosecution is not substantial.³ Except as may be provided specifically in other policy statements or directives, the responsibility for exercising prosecutorial discretion in this manner rests with the District Director (DD) or Chief Patrol Agent (CPA) based on his or her common sense and sound judgment.⁴ The DD or CPA should obtain legal advice from the District or Sector Counsel to the extent that such advice may be necessary and appropriate to ensure the sound and lawful exercise of discretion, particularly with respect to cases pending before the Executive Office for Immigration Review (EOIR).⁵ The DD's or CPA's authority may be delegated to the extent necessary and proper, except that decisions not to place a removable alien in removal proceedings, or decisions to move to terminate a proceeding which in the opinion of the District or Sector Counsel is legally sufficient, may not be delegated to an officer who is not authorized under 8 C.F.R. § 239.1 to issue an NTA. A DD's or CPA's exercise of prosecutorial discretion will not normally be reviewed by Regional or Headquarters authority. However, DDs and CPAs remain subject to their chains of command and may be supervised as necessary in their exercise of prosecutorial discretion.

Investigations

Priorities for deploying investigative resources are discussed in other documents, such as the interior enforcement strategy, and will not be discussed in detail in this memorandum. These previously identified priorities include identifying and removing criminal and terrorist aliens, deterring and dismantling alien smuggling, minimizing benefit fraud and document abuse, responding to community complaints about illegal immigration and building partnerships to solve local problems, and blocking and removing employers' access to undocumented workers. Even within these broad priority areas, however, the Service must make decisions about how best to expend its resources.

Managers should plan and design operations to maximize the likelihood that serious offenders will be identified. Supervisors should ensure that front-line investigators understand that it is not mandatory to issue an NTA in every case where they have reason to believe that an alien is removable, and agents should be encouraged to bring questionable cases to a supervisor's attention. Operational planning for investigations should include consideration of appropriate procedures for supervisory and legal review of individual NTA issuing decisions.

³ In some cases even a substantial immigration enforcement interest in prosecuting a case could be outweighed by other interests, such as the foreign policy of the United States. Decisions that require weighing such other interests should be made at the level of responsibility within the INS or the Department of Justice that is appropriate in light of the circumstances and interests involved.

⁴ This general reference to DDs and CPAs is not intended to exclude from coverage by this memorandum other INS personnel, such as Service Center directors, who may be called upon to exercise prosecutorial discretion and do not report to DDs or CPAs, or to change any INS chains of command.

⁵ Exercising prosecutorial discretion with respect to cases pending before EOIR involves procedures set forth at 8 CFR 239.2 and 8 CFR Part 3, such as obtaining the court's approval of a motion to terminate proceedings.

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Careful design of enforcement operations is a key element in the INS' exercise of prosecutorial discretion. Managers should consider not simply whether a particular effort is legally supportable, but whether it best advances the INS' goals, compared with other possible uses of those resources. As a general matter, investigations that are specifically focused to identify aliens who represent a high priority for removal should be favored over investigations which, by their nature, will identify a broader variety of removable aliens. Even an operation that is designed based on high-priority criteria, however, may still identify individual aliens who warrant a favorable exercise of prosecutorial discretion.⁶

Initiating and Pursuing Proceedings

Aliens who are subject to removal may come to the Service's attention in a variety of ways. For example, some aliens are identified as a result of INS investigations, while others are identified when they apply for immigration benefits or seek admission at a port-of-entry. While the context in which the INS encounters an alien may, as a practical matter, affect the Service's options, it does not change the underlying principle that the INS has discretion and should exercise that discretion appropriately given the circumstances of the case.

Even when an immigration officer has reason to believe that an alien is removable and that there is sufficient evidence to obtain a final order of removal, it may be appropriate to decline to proceed with that case. This is true even when an alien is removable based on his or her criminal history and when the alien—if served with an NTA—would be subject to mandatory detention. The INS may exercise its discretion throughout the enforcement process. Thus, the INS can choose whether to issue an NTA, whether to cancel an NTA prior to filing with the immigration court or move for dismissal in immigration court (under 8 CFR 239.2), whether to detain (for those aliens not subject to mandatory detention), whether to offer an alternative to removal such as voluntary departure or withdrawal of an application for admission, and whether to stay an order of deportation.

The decision to exercise any of these options or other alternatives in a particular case requires an individualized determination, based on the facts and the law. As a general matter, it is better to exercise favorable discretion as early in the process as possible, once the relevant facts have been determined, in order to conserve the Service's resources and in recognition of the alien's interest in avoiding unnecessary legal proceedings. However, there is often a conflict

⁶ For example, operations in county jails are designed to identify and remove criminal aliens, a high priority for the Service. Nonetheless, an investigator working at a county jail and his or her supervisor should still consider whether the exercise of prosecutorial discretion would be appropriate in individual cases.

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between making decisions as soon as possible, and making them based on evaluating as many relevant, credible facts as possible. Developing an extensive factual record prior to making a charging decision may itself consume INS resources in a way that negates any saving from forgoing a removal proceeding.

Generally, adjudicators may have a better opportunity to develop a credible factual record at an earlier stage than investigative or other enforcement personnel. It is simply not practicable to require officers at the arrest stage to develop a full investigative record on the equities of each case (particularly since the alien file may not yet be available to the charging office), and this memorandum does not require such an analysis. Rather, what is needed is knowledge that the INS is not legally required to institute proceedings in every case, openness to that possibility in appropriate cases, development of facts relevant to the factors discussed below to the extent that it is reasonably possible to do so under the circumstances and in the timeframe that decisions must be made, and implementation of any decision to exercise prosecutorial discretion.

There is no precise formula for identifying which cases warrant a favorable exercise of discretion. Factors that should be taken into account in deciding whether to exercise prosecutorial discretion include, but are not limited to, the following:

- Immigration status: Lawful permanent residents generally warrant greater consideration. However, other removable aliens may also warrant the favorable exercise of discretion, depending on all the relevant circumstances.
- Length of residence in the United States: The longer an alien has lived in the United States, particularly in legal status, the more this factor may be considered a positive equity.
- Criminal history: Officers should take into account the nature and severity of any criminal conduct, as well as the time elapsed since the offense occurred and evidence of rehabilitation. It is appropriate to take into account the actual sentence or fine that was imposed, as an indicator of the seriousness attributed to the conduct by the court. Other factors relevant to assessing criminal history include the alien's age at the time the crime was committed and whether or not he or she is a repeat offender.
- Humanitarian concerns: Relevant humanitarian concerns include, but are not limited to, family ties in the United States; medical conditions affecting the alien or the alien's family; the fact that an alien entered the United States at a very young age; ties to one's home country (e.g., whether the alien speaks the language or has relatives in the home country); extreme youth or advanced age; and home country conditions.
- Immigration history: Aliens without a past history of violating the immigration laws (particularly violations such as reentering after removal, failing to appear at hearing, or resisting arrest that show heightened disregard for the legal process) warrant favorable consideration to a greater extent than those with such a history. The seriousness of any such violations should also be taken into account.

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- Likelihood of ultimately removing the alien: Whether a removal proceeding would have a reasonable likelihood of ultimately achieving its intended effect, in light of the case circumstances such as the alien's nationality, is a factor that should be considered.
- Likelihood of achieving enforcement goal by other means: In many cases, the alien's departure from the United States may be achieved more expeditiously and economically by means other than removal, such as voluntary return, withdrawal of an application for admission, or voluntary departure.
- Whether the alien is eligible or is likely to become eligible for other relief: Although not determinative on its own, it is relevant to consider whether there is a legal avenue for the alien to regularize his or her status if not removed from the United States. The fact that the Service cannot confer complete or permanent relief, however, does not mean that discretion should not be exercised favorably if warranted by other factors.
- Effect of action on future admissibility: The effect an action such as removal may have on an alien can vary—for example, a time-limited as opposed to an indefinite bar to future admissibility—and these effects may be considered.
- Current or past cooperation with law enforcement authorities: Current or past cooperation with the INS or other law enforcement authorities, such as the U.S. Attorneys, the Department of Labor, or National Labor Relations Board, among others, weighs in favor of discretion.
- Honorable U.S. military service: Military service with an honorable discharge should be considered as a favorable factor. See Standard Operating Procedures Part V.D.8 (issuing an NTA against current or former member of armed forces requires advance approval of Regional Director).
- Community attention: Expressions of opinion, in favor of or in opposition to removal, may be considered, particularly for relevant facts or perspectives on the case that may not have been known to or considered by the INS. Public opinion or publicity (including media or congressional attention) should not, however, be used to justify a decision that cannot be supported on other grounds. Public and professional responsibility will sometimes require the choice of an unpopular course.
- Resources available to the INS: As in planning operations, the resources available to the INS to take enforcement action in the case, compared with other uses of the resources to fulfill national or regional priorities, are an appropriate factor to consider, but it should not be determinative. For example, when prosecutorial discretion should be favorably exercised under these factors in a particular case, that decision should prevail even if there is detention space available.

Obviously, not all of the factors will be applicable to every case, and in any particular case one factor may deserve more weight than it might in another case. There may be other factors, not on the list above, that are appropriate to consider. The decision should be based on the totality of the circumstances, not on any one factor considered in isolation. General guidance such as this cannot provide a "bright line" test that may easily be applied to determine the "right" answer in every case. In many cases, minds reasonably can differ, different factors may point in different directions, and there is no clearly "right" answer. Choosing a course of action in difficult

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cases must be an exercise of judgment by the responsible officer based on his or her experience, good sense, and consideration of the relevant factors to the best of his or her ability.

There are factors that may not be considered. Impermissible factors include:

- An individual's race, religion, sex, national origin, or political association, activities or beliefs;⁷
- The officer's own personal feelings regarding the individual; or
- The possible effect of the decision on the officer's own professional or personal circumstances.

In many cases, the procedural posture of the case, and the state of the factual record, will affect the ability of the INS to use prosecutorial discretion. For example, since the INS cannot admit an inadmissible alien to the United States unless a waiver is available, in many cases the INS' options are more limited in the admission context at a port-of-entry than in the deportation context.

Similarly, the INS may consider the range of options and information likely to be available at a later time. For example, an officer called upon to make a charging decision may reasonably determine that he or she does not have a sufficient, credible factual record upon which to base a favorable exercise of prosecutorial discretion not to put the alien in proceedings, that the record cannot be developed in the timeframe in which the decision must be made, that a more informed prosecutorial decision likely could be made at a later time during the course of proceedings, and that if the alien is not served with an NTA now, it will be difficult or impossible to do so later.

Such decisions must be made, however, with due regard for the principles of these guidelines, and in light of the other factors discussed here. For example, if there is no relief available to the alien in a removal proceeding and the alien is subject to mandatory detention if

⁷ This general guidance on factors that should not be relied upon in making a decision whether to enforce the law against an individual is not intended to prohibit their consideration to the extent they are directly relevant to an alien's status under the immigration laws or eligibility for a benefit. For example, religion and political beliefs are often directly relevant in asylum cases and need to be assessed as part of a prosecutorial determination regarding the strength of the case, but it would be improper for an INS officer to treat aliens differently based on his personal opinion about a religion or belief. Political activities may be relevant to a ground of removal on national security or terrorism grounds. An alien's nationality often directly affects his or her eligibility for adjustment or other relief, the likelihood that he or she can be removed, or the availability of prosecutorial options such as voluntary return, and may be considered to the extent these concerns are pertinent.

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placed in proceedings, that situation suggests that the exercise of prosecutorial discretion, if appropriate, would be more useful to the INS if done sooner rather than later. It would be improper for an officer to assume that someone else at some later time will always be able to make a more informed decision, and therefore never to consider exercising discretion.

Factors relevant to exercising prosecutorial discretion may come to the Service's attention in various ways. For example, aliens may make requests to the INS to exercise prosecutorial discretion by declining to pursue removal proceedings. Alternatively, there may be cases in which an alien asks to be put in proceedings (for example, to pursue a remedy such as cancellation of removal that may only be available in that forum). In either case, the INS may consider the request, but the fact that it is made should not determine the outcome, and the prosecutorial decision should be based upon the facts and circumstances of the case. Similarly, the fact that an alien has not requested prosecutorial discretion should not influence the analysis of the case. Whether, and to what extent, any request should be considered is also a matter of discretion. Although INS officers should be open to new facts and arguments, attempts to exploit prosecutorial discretion as a delay tactic, as a means merely to revisit matters that have been thoroughly considered and decided, or for other improper tactical reasons should be rejected. There is no legal right to the exercise of prosecutorial discretion, and (as stated at the close of this memorandum) this memorandum creates no right or obligation enforceable at law by any alien or any other party.

Process for Decisions

Identification of Suitable Cases

No single process of exercising discretion will fit the multiple contexts in which the need to exercise discretion may arise. Although this guidance is designed to promote consistency in the application of the immigration laws, it is not intended to produce rigid uniformity among INS officers in all areas of the country at the expense of the fair administration of the law. Different offices face different conditions and have different requirements. Service managers and supervisors, including DDs and CPAs, and Regional, District, and Sector Counsel must develop mechanisms appropriate to the various contexts and priorities, keeping in mind that it is better to exercise discretion as early in process as possible once the factual record has been identified.⁸ In particular, in cases where it is clear that no statutory relief will be available at the immigration hearing and where detention will be mandatory, it best conserves the Service's resources to make a decision early.

Enforcement and benefits personnel at all levels should understand that prosecutorial discretion exists and that it is appropriate and expected that the INS will exercise this authority in appropriate cases. DDs, CPAs, and other supervisory officials (such as District and

⁸ DDs, CPAs, and other INS personnel should also be open, however, to possible reconsideration of decisions (either for or against the exercise of discretion) based upon further development of the facts.

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Sector Counsels) should encourage their personnel to bring potentially suitable cases for the favorable exercise of discretion to their attention for appropriate resolution. To assist in exercising their authority, DDs and CPAs may wish to convene a group to provide advice on difficult cases that have been identified as potential candidates for prosecutorial discretion.

It is also appropriate for DDs and CPAs to develop a list of "triggers" to help their personnel identify cases at an early stage that may be suitable for the exercise of prosecutorial discretion. These cases should then be reviewed at a supervisory level where a decision can be made as to whether to proceed in the ordinary course of business, to develop additional facts, or to recommend a favorable exercise of discretion. Such triggers could include the following facts (whether proven or alleged):

Lawful permanent residents;
Aliens with a serious health condition;
Juveniles;
Elderly aliens;
Adopted children of U.S. citizens;
U.S. military veterans;
Aliens with lengthy presence in United States (i.e., 10 years or more); or
Aliens present in the United States since childhood.

Since workloads and the type of removable aliens encountered may vary significantly both within and between INS offices, this list of possible trigger factors for supervisory review is intended neither to be comprehensive nor mandatory in all situations. Nor is it intended to suggest that the presence or absence of "trigger" facts should itself determine whether prosecutorial discretion should be exercised, as compared to review of all the relevant factors as discussed elsewhere in these guidelines. Rather, development of trigger criteria is intended solely as a suggested means of facilitating identification of potential cases that may be suitable for prosecutorial review as early as possible in the process.

Documenting Decisions

When a DD or CPA decides to exercise prosecutorial discretion favorably, that decision should be clearly documented in the alien file, including the specific decision taken and its factual and legal basis. DDs and CPAs may also document decisions based on a specific set of facts not to exercise prosecutorial discretion favorably, but this is not required by this guidance.

The alien should also be informed in writing of a decision to exercise prosecutorial discretion favorably, such as not placing him or her in removal proceedings or not pursuing a case. This normally should be done by letter to the alien and/or his or her attorney of record, briefly stating the decision made and its consequences. It is not necessary to recite the facts of the case or the INS' evaluation of the facts in such letters. Although the specifics of the letter

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will vary depending on the circumstances of the case and the action taken, it must make it clear to the alien that exercising prosecutorial discretion does not confer any immigration status, ability to travel to the United States (unless the alien applies for and receives advance parole), immunity from future removal proceedings, or any enforceable right or benefit upon the alien. If, however, there is a potential benefit that is linked to the action (for example, the availability of employment authorization for beneficiaries of deferred action), it is appropriate to identify it.

The obligation to notify an individual is limited to situations in which a specific, identifiable decision to refrain from action is taken in a situation in which the alien normally would expect enforcement action to proceed. For example, it is not necessary to notify aliens that the INS has refrained from focusing investigative resources on them, but a specific decision not to proceed with removal proceedings against an alien who has come into INS custody should be communicated to the alien in writing. This guideline is not intended to replace existing standard procedures or forms for deferred action, voluntary return, voluntary departure, or other currently existing and standardized processes involving prosecutorial discretion.

Future Impact

An issue of particular complexity is the future effect of prosecutorial discretion decisions in later encounters with the alien. Unlike the criminal context, in which statutes of limitation and venue requirements often preclude one U.S. Attorney's office from prosecuting an offense that another office has declined, immigration violations are continuing offenses that, as a general principle of immigration law, continue to make an alien legally removable regardless of a decision not to pursue removal on a previous occasion. An alien may come to the attention of the INS in the future through seeking admission or in other ways. An INS office should abide by a favorable prosecutorial decision taken by another office as a matter of INS policy, absent new facts or changed circumstances. However, if a removal proceeding is transferred from one INS district to another, the district assuming responsibility for the case is not bound by the charging district's decision to proceed with an NTA, if the facts and circumstances at a later stage suggest that a favorable exercise of prosecutorial discretion is appropriate.

Service offices should review alien files for information on previous exercises of prosecutorial discretion at the earliest opportunity that is practicable and reasonable and take any such information into account. In particular, the office encountering the alien must carefully assess to what extent the relevant facts and circumstances are the same or have changed either procedurally or substantively (either with respect to later developments, or more detailed knowledge of past circumstances) from the basis for the original exercise of discretion. A decision by an INS office to take enforcement action against the subject of a previous documented exercise of favorable prosecutorial discretion should be memorialized with a memorandum to the file explaining the basis for the decision, unless the charging documents on their face show a material difference in facts and circumstances (such as a different ground of deportability).

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Legal Liability and Enforceability

The question of liability may arise in the implementation of this memorandum. Some INS personnel have expressed concerns that, if they exercise prosecutorial discretion favorably, they may become subject to suit and personal liability for the possible consequences of that decision. We cannot promise INS officers that they will never be sued. However, we can assure our employees that Federal law shields INS employees who act in reasonable reliance upon properly promulgated agency guidance within the agency's legal authority – such as this memorandum—from personal legal liability for those actions.

The principles set forth in this memorandum, and internal office procedures adopted hereto, are intended solely for the guidance of INS personnel in performing their duties. They are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Training and Implementation

Training on the implementation of this memorandum for DDs, CPAs, and Regional, District, and Sector Counsel will be conducted at the regional level. This training will include discussion of accountability and periodic feedback on implementation issues. In addition, following these regional sessions, separate training on prosecutorial discretion will be conducted at the district level for other staff, to be designated. The regions will report to the Office of Field Operations when this training has been completed.

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Office of the Assistant Secretary

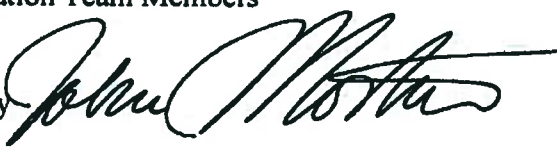
U.S. Department of Homeland Security
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**U.S. Immigration
and Customs
Enforcement**

DEC 08 2009

MEMORANDUM FOR: Field Office Directors and
All Fugitive Operation Team Members

FROM: John Morton
Assistant Secretary 

SUBJECT: National Fugitive Operations Program: Priorities, Goals, and
Expectations

Purpose

This memorandum serves to clarify the enforcement priorities of the National Fugitive Operations Program (hereinafter the program) within the Office of Detention and Removal Operations (DRO) and supersedes previously issued fugitive operations guidance. The existence and continuation of this program are essential to the integrity of the immigration and border controls. Good government is poorly served if, after much time and the expenditure of government resources, final orders of removal are ignored without consequence. Indeed, the sound administration of the nation's immigration system depends on an efficient, fair, and meaningful removal process. As a result, it is the clear policy of this agency that final orders of removal should be enforced and that those who knowingly disobey or evade a final order of removal should be apprehended and removed.

In order to ensure that the program's resources are used efficiently and as envisioned by Congress, it is the policy of this agency that the program focus on its core mission—the apprehension and removal of fugitive aliens.¹ In the interest of public safety and the rule of law, the program's resources may also be used to apprehend and remove (1) aliens who have been removed previously from the United States and then return illegally, and (2) criminal or otherwise dangerous aliens living at large in our communities. As a general rule, the program's resources should not be used to target other classes of removable aliens, although fugitive operations teams may apprehend and remove such aliens if encountered during normal operations.

¹ A fugitive is any alien who has failed to leave the United States following the issuance of a final order of removal, deportation, or exclusion or has failed to report to ICE after receiving notice to do so.

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Enforcement Priorities

The following three tiers reflect, in order of priority, how fugitive operations teams should focus their resources. Teams must focus the vast majority of resources, at least 70%, on tier 1 fugitives. The remainder should be directed to tiers 2 and 3. The priorities within each tier are also listed below, with level I generally warranting more attention than level II, and so forth. These tiers and levels provide clear guidance to the field but should not be applied so rigidly as to undermine sound judgment when exceptions are warranted by circumstance.² Similarly, the tiers should not be so rigidly interpreted to prevent prioritizing an illegal reentrant with a serious criminal conviction over a fugitive with no criminal history.

Tier 1 Fugitive aliens

- I. Fugitives who pose a threat to national security
- II. Fugitives convicted of violent crimes or who otherwise pose a threat to the community
- III. Fugitives with a criminal conviction other than a violent crime
- IV. Fugitives with no criminal conviction

Tier 2 Previously removed aliens

- I. Previously removed aliens who pose a threat to national security
- II. Previously removed aliens convicted of violent crimes or who otherwise pose a threat to the community
- III. Previously removed aliens with a criminal conviction other than a violent crime
- IV. Previously removed aliens with no criminal conviction

Tier 3 Removable aliens convicted of crimes

- I. Aliens convicted of level 1 offenses, as defined for purpose of Secure Communities
- II. Aliens convicted of level 2 offenses, as defined for purposes of Secure Communities
- III. Aliens convicted of level 3 offenses, as defined for purposes of Secure Communities

With respect to non-criminal fugitive targets in Tier 1, level IV, the Fugitive Operations Support Center (FOSC) and teams should consider that aliens who are the subject of in absentia orders and aliens with pending applications for relief before U.S. Citizenship and Immigration Services are more likely to have viable motions to reopen. For that reason, resources—particularly detention resources—may be better focused on other targets, unless aggravating circumstances offset the possibility of reopening or prolonged proceedings.

To promote efficiency, teams are expected to focus resources on cases with the most current investigative leads, including cases with the most recently issued final orders as these are most

² 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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likely to contain up-to-date contact information. These should be targeted as soon as possible to limit the opportunity for a fugitive to relocate. Teams are expected to act expeditiously if they receive current, time-sensitive leads.

As resources are best spent on cases with the freshest and most reliable leads, FOSC has created a cold case docket for those cases without any investigative leads in the past decade. FOSC will review the cold case docket twice a year to determine if new information has surfaced. New information may cause FOSC to conclude the case is resolved (for instance, because the case was reopened) or return it to the active fugitive docket (for instance, because of new information about the alien's location).

Teams will receive Fourth Amendment training every six months which will focus on the special considerations when apprehending fugitives at their home. Any team member with questions should consult his or her supervisors and consult with the Office of Chief Counsel. Team members are encouraged to engage in surveillance both to promote officer safety and increase the likelihood the team will encounter the targeted alien—rather than aliens who are not in the tiers above and would not otherwise have been the focus of limited government resources.

If during the course of operations teams encounter removable aliens, teams may place those aliens into removal proceedings, even if they are not in one of the three tiers. However, this should not detract attention away from the reason Congress mandated and funded fugitive operation teams—the apprehension and removal of fugitive aliens. In any event, detention resources shall be focused on aliens in the three tiers above and aliens subject to mandatory detention by law. Absent extraordinary circumstances, team members should not detain aliens who are physically or mentally ill, disabled, elderly, pregnant, nursing, or the sole caretaker(s) of children or the infirm. To detain aliens in those categories, team members must secure approval from the Field Office Director and send a significant event notice (SEN) to headquarters.

Measuring Success

As apprehending and removing fugitives is the program's core mission, field offices' performance will be measured in part by the reduction in the fugitive docket and by compliance with priorities. Each field office and the FOSC should strive to reduce the pool of fugitives by 5% more in FY 2010 than it did in FY 2009. A field office may increase productivity—the reduction in the fugitive pool—by apprehending fugitives or otherwise resolving fugitive cases, even if no arrest is involved. This includes resolving cases by determining that a target has departed the country on his or her own or determining that the case was reopened or the target has since received an immigration benefit. Field offices should not feel such pressure to meet this goal that they lose focus on the priorities and sound use of resources. This goal does not constitute a quota; rather, this goal allows the teams to gauge their productivity.

The field should not focus on numbers to the detriment of targeting and arresting the most egregious, violent offenders in their area of responsibility (AOR). To acknowledge the tiered prioritization above, DRO also will track fugitive arrests, by tier, using EARM/FCMS/TECS. Arrests will be separated by tiers, criminal and non-criminal arrests, and indictments and

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convictions attributed to teams during operations. This system will credit teams for locating high priority aliens, even if those cases require more time to investigate and close.

Field offices are expected to focus not simply on the apprehension of aliens, but also on their removal. Headquarters will evaluate removals in addition to the metrics above. When fugitives are taken into custody, officers should pay attention to lawful avenues to secure the person's travel documents to reduce detention times and facilitate removal.

Field and National Operations

Field offices have the discretion to conduct operations to advance the program's priorities and accomplish the goal of reducing the fugitive pool. Field offices are encouraged to participate in Operation Cross Check and Operation Secure Streets in collaboration with local United States Attorney's offices. These operations are important as they identify criminal aliens who fall within the three tiers above. Field offices also will be called on to participate in national and strategic headquarters-driven operations. Major operations, whether driven by the field or headquarters, will be coordinated with the Office of the Principal Legal Advisor.

Building Partnerships

Field Office Directors and team members are encouraged to maintain and build positive relationships with federal, state, local, and tribal law enforcement agencies in their AOR. This includes information sharing, consistent with law and policy. Team members are encouraged to advise, and cooperate with, local law enforcement partners when conducting operations. Field Office Directors will coordinate with any local participants in the task force model of the 287(g) program to share information and avoid duplication of efforts.

Field Office Directors also are expected to build relationships with community groups to identify and address concerns about the conduct of fugitive operations. Allegations of misconduct and wrongdoing are referable to the Joint Intake Center (JIC).

(b) (6), (b) (7) (C)



(b)(6), (b)(7)(C)

PENNSSTATE



Milton S. Hershey Medical Center
College of Medicine

(b)(6), (b)(7)(C)

PENNSTATE



Milton S. Hershey Medical Center
College of Medicine

(b)(6), (b)(7)(C)

TRANSLATION

Medical College of Peru
National Council

(b)(6), (b)(7)(C)



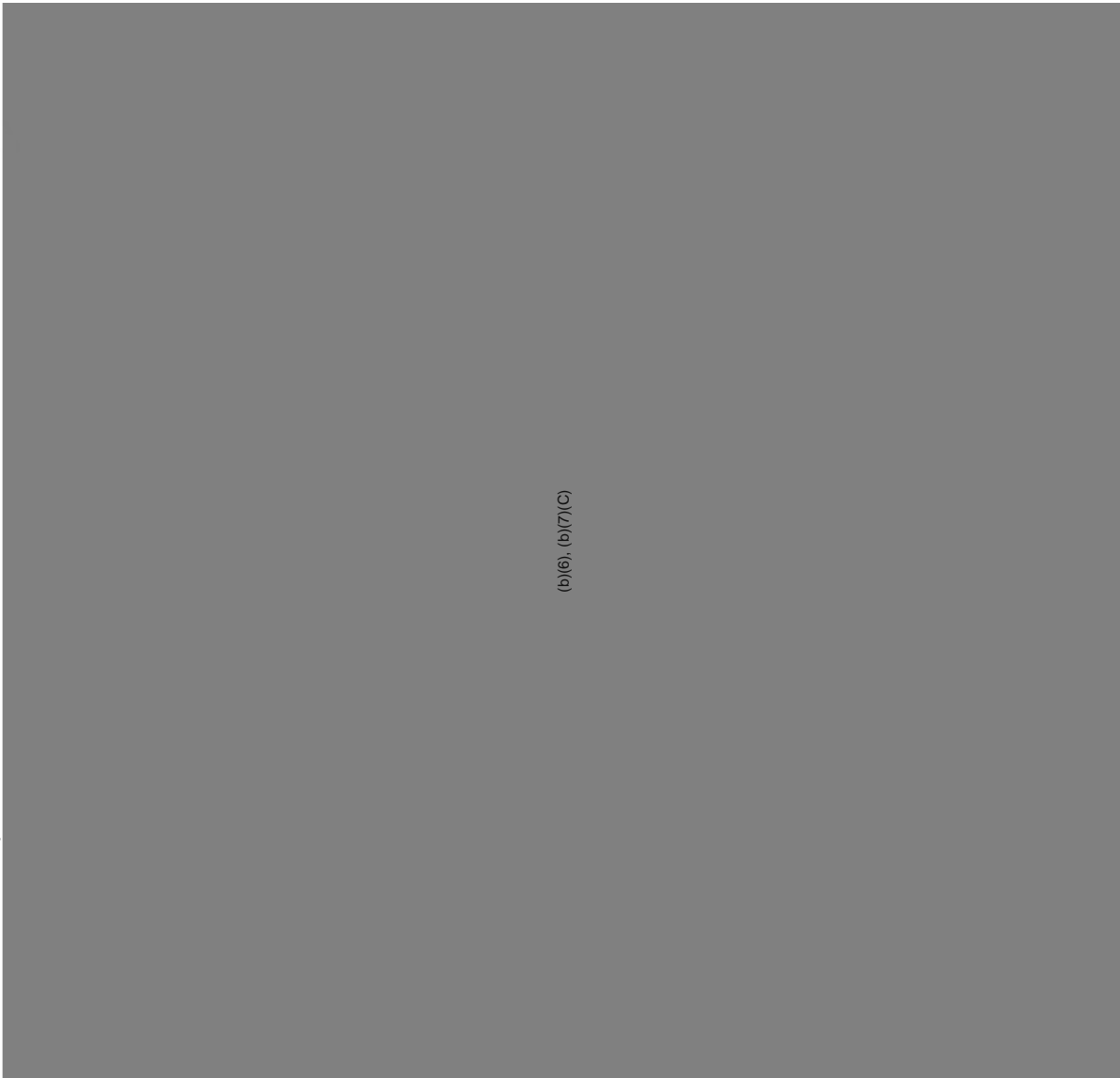
COLEGIO MÉDICO DEL PERÚ
CONSEJO NACIONAL

(b)(6), (b)(7)(C)

TRANSLATION

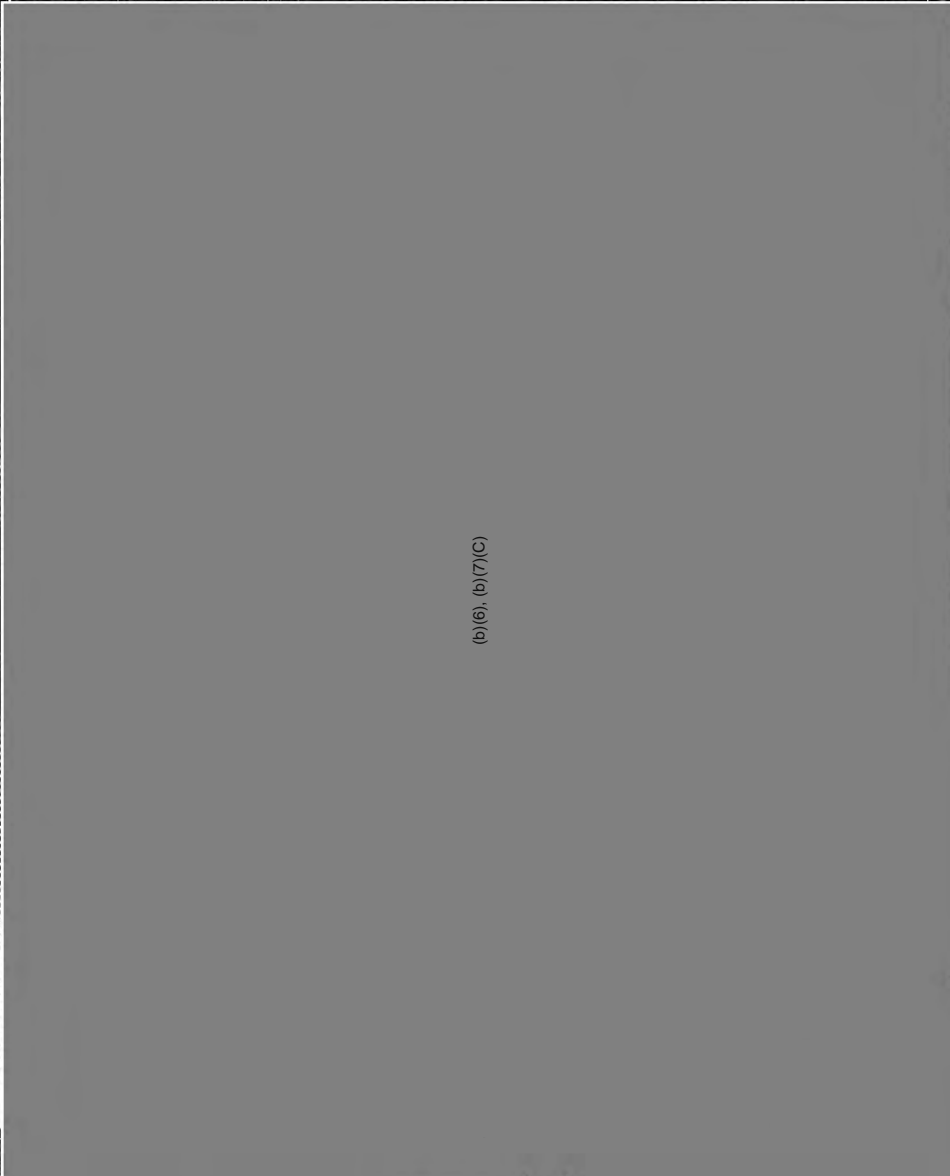
Medical College of Peru
National Council

(b)(6), (b)(7)(C)






COLEGIO MÉDICO DEL PERÚ CONSEJO NACIONAL



(b) (6), (b) (7) (C)

THOMAS EDWARDS, MD, PhD

(b)(6), (b)(7)(C)





OUR MISSION IS TO RESTORE, PROMOTE AND MAINTAIN HEALTH IN THE PEOPLE WE SERGE.

P.O. BOX 413029, Naples FL 34101

TEL: 239.436.5000

WEB: <http://www.nchmd.org>

Idiopathic Thrombocytopenic Purpura

What is idiopathic thrombocytopenic purpura (ITP)?

ITP is a blood disorder characterized by an abnormal decrease in the number of platelets in the blood. Platelets are cells in the blood that help stop bleeding. A decrease in platelets can result in easy bruising, bleeding gums, and internal bleeding.

- "Idiopathic" means the cause is unknown.
- "Thrombocytopenia" means a decreased number of platelets in the blood.
- "Purpura" refers to the purple discoloring of the skin, as with a bruise.

Who is affected by ITP?

There are two forms of ITP, including the following:

- **acute thrombocytopenic purpura**
This is most commonly seen in young children (2 to 6 years old). The symptoms may follow a viral illness, such as chickenpox. Acute ITP usually has a very sudden onset and the symptoms usually disappear in less than six months (often within a few weeks). The disorder usually does not recur. Acute ITP is the most common form of the disorder.
- **chronic thrombocytopenic purpura**
The onset of the disorder can happen at any age, and the symptoms can last a minimum of six months, or several years. Adults have this form more often than children, but it does affect adolescents. Females have it two to three times more often than males. Chronic ITP can recur often and requires continual follow-up care with a blood specialist (hematologist).

What causes idiopathic thrombocytopenic purpura?

Idiopathic means no known cause. However, when a cause can be identified, it may be a result of the following:

- medications (including over-the-counter medications)
- infection
- pregnancy
- immune disorders

What are the symptoms of idiopathic thrombocytopenic purpura?

Normal platelet count is in the range of 150,000 to 450,000. With ITP, the platelet count is less than 100,000. By the time significant bleeding occurs, the child may have a platelet count of less than 10,000. The lower the platelet count, the greater the risk of bleeding.

Because platelets help stop bleeding, the symptoms of ITP are related to increased bleeding. However, each person may experience symptoms differently. Symptoms may include the following:

- purpura - the purple color of the skin after blood has "leaked" under it. A bruise is blood under the skin. Persons with ITP may have large bruises from no known trauma. Bruises can appear at the joints of elbows and knees just from movement.

- petechia - tiny red dots under the skin that are a result of very small bleeds.
- nosebleeds
- bleeding in the mouth and/or in and around the gums
- blood in the vomit, urine, or stool
- bleeding in the head - this is the most dangerous symptom of ITP. Any head trauma that occurs when there are not enough platelets to stop the bleeding can be life threatening.

The symptoms of ITP may resemble other Hematology & Blood Disorders or medical problems. Always consult your physician for a diagnosis.

How is idiopathic thrombocytopenic purpura diagnosed?

In addition to a complete medical history and physical examination, diagnostic procedures for idiopathic thrombocytopenic purpura may include the following:

- **complete blood count (CBC)** - a measurement of size, number, and maturity of different blood cells in a specific volume of blood (to measure platelets).
- **additional blood and urine tests** (to measure bleeding time and detect possible infections)
- **careful review of the patient's medications**

Sometimes, a bone marrow aspiration is performed to look at the production of platelets and to rule out any abnormal cells the marrow may be producing that could lower platelet counts.

Treatment for idiopathic thrombocytopenic purpura:

Specific treatment for idiopathic thrombocytopenic purpura will be determined by your physician based on:

- your age, overall health, and medical history
- extent of the disease
- your tolerance for specific medications, procedures, or therapies
- expectations for the course of the disease
- your opinion or preference

When treatment is necessary, the two most common forms of treatment are steroids and intravenous gamma globulin:

- **steroids**
Steroids help prevent bleeding by decreasing the rate of platelet destruction. Steroids, if effective, will result in an increase in platelet counts seen within two to three weeks. Side effects may include irritability, stomach irritation, weight gain, hypertension, and acne.
- **intravenous gamma globulin (IVGG)**
Intravenous gamma globulin (IVGG) is a protein that contains many antibodies and also slows the destruction of platelets. IVGG works more quickly than steroids (within 24 to 48 hours).

Other treatments for ITP may include:

- **Rh immune globulin**
This medication temporarily stops the spleen from destroying platelets. You must be Rh positive and have a spleen for this medication to be effective.

- medication changes

If it is a medication that is the suspected cause, discontinuation or changing the medication may be necessary.

infection treatment

If infection is the cause for ITP, then treatment of the infection may result in higher platelet counts.

- splenectomy

In some cases, the patient's spleen may need to be removed since this is the site of platelet destruction. This is considered more often in persons with chronic ITP to decrease the rate of platelet destruction.

lifestyle changes, such as the following:

- o use of protective gear
- o avoidance of certain activities

*Click here to view the
Online Resources of Hematology & Blood Disorders*

(b)(6), (b)(7)(C)
 From: (b)(6), (b)(7)(C) on behalf of DRO Taskings
 Sent: Thursday, July 08, 2010 1:52 PM
 To: (b)(6), (b)(7)(C)
 Cc: (b)(6), (b)(7)(C) DRO Taskings
 Subject: FW: 10071002 | Deferred Action

Hi (b)(6), (b)(7)(C)

Please see below from CIS:

FY	COUNT of EADs
2007	17,042
2008	18,078
2009	15,508
2010	8,297

Thank you,

(b)(6), (b)(7)(C)
Taskings and Correspondence Unit
 Department of Homeland Security
 Immigration and Customs Enforcement
 Enforcement and Removal Operations
 500 12th Street SW | Washington D.C. 20024
 202-732- (b)(6), (b)(7)(C) Office | 202-905- (b)(6), (b)(7)(C) Cellular

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(b)(6), (b)(7)(C)
 From: (b)(6), (b)(7)(C) On Behalf Of USCIS Exec Sec
 Sent: Thursday, July 08, 2010 1:51 PM
 To: DRO Taskings
 Cc: USCIS Exec Sec; (b)(6), (b)(7)(C)
 Subject: RE: 10071002 | Deferred Action

As requested...

FY	COUNT of EADs
2007	17,042
2008	18,078
2009	15,508
2010	8,297

(b)(6), (b)(7)(C)
USCIS Office of the Executive Secretariat
 (202) 272- (b)(6), (b)(7)(C) Office)

(202) 272-0997 (Fax)

Please send all official actions to uscisexecsec@dhs.gov and, if applicable, attach a completed G-1056. Thank you.

From: (b)(7)(C) On Behalf Of DRO Taskings
Sent: Thursday, July 08, 2010 1:47 PM
To: USCIS Exec Sec
Cc: (b)(7)(C) DRO Taskings
Subject: 10071002 | Deferred Action

Good afternoon CIS,

ERO would like to follow up on the below statistics request, please advise on the status of this.

Thank you,

(b)(7)(C)
Taskings and Correspondence Unit
Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations
500 12th Street SW | Washington D.C. 20024
202-732- (b)(6) Office | 202-905- (b)(7)(C) Cellular

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From: (b)(7)(C) On Behalf Of DRO Taskings
Sent: Thursday, July 01, 2010 3:39 PM
To: #ICE OI Tasking; USCIS Exec Sec
Cc: DRO Taskings
Subject: 10071002 | Deferred Action

Good afternoon HSI Tasking and CIS Exec Sec,

ERO would like to request the following information:

HSI - From FY07 - FY10 how many individuals have been granted deferred action as part of a broader US law enforcement investigation? Please break this down by FY.

CIS - From FY07 - FY10 how many EADs were issued based on deferred action. Please break down by FY.

Please submit this information to ERO Taskings NLT July 8, 2010 at 1200hrs.

Thank you,

(b)(3), (b)(7)(C)
[Redacted]
Taskings and Correspondence Unit
Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations
500 12th Street SW | Washington D.C. 20024
202-732- (b)(6) Office | 202-905- (b)(6) Cellular

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7/30/2010

2010FOIA6052.001110

(b)(6), (b)(7)(C)
 From: [REDACTED] on behalf of DRO Taskings
 Sent: Thursday, July 08, 2010 1:44 PM
 To: [REDACTED]
 Cc: [REDACTED] DRO Taskings
 Subject: FW: 10071002 | Deferred Action
 Attachments: 10071002 Deferred Action 07072010.xls

Hi [REDACTED]

Please see the attached stats from IPC, we did not get a response back from CIS.

Thank you,

(b)(6), (b)(7)(C)
 Taskings and Correspondence Unit
 Department of Homeland Security
 Immigration and Customs Enforcement
 Enforcement and Removal Operations
 500 12th Street SW | Washington D.C. 20024
 202-732-[REDACTED] Office | 202-905-[REDACTED] Cellular

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(b)(6), (b)(7)(C)
 From: [REDACTED]
 Sent: Thursday, July 08, 2010 1:06 PM
 To: DRO Taskings
 Cc: [REDACTED]
 Subject: FW: 10071002 | Deferred Action

This is cleared

Mr. [REDACTED]
 Deputy Chief of Staff (A)
 Office of the Director
 Enforcement & Removal Operations
 Work (202) 732-[REDACTED]
 Fax (202) 732-3115

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(b)(6), (b)(7)(C)
 From: [REDACTED] On Behalf Of DRO Taskings
 Sent: Thursday, July 08, 2010 12:55 PM
 To: [REDACTED]
 Cc: DRO Taskings; [REDACTED]
 Subject: 10071002 | Deferred Action

(b)(6), (b)(7)(C)

The attached is ready for review.

Request:

From FY07 - FY10- how many individuals who entered as students ultimately were granted deferred action.
Please breakdown by FY

Response:

Please see attached

Cleared by:

(a)DAD

(b)(6), (b)(7)(C)

Thank you,

(b)(6), (b)(7)(C)

Taskings & Correspondence Unit
Enforcement and Removal Operations
Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street SW| Washington, DC 20536 | 202-732-

(b)(6), (b)(7)(C)

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From:

Sent: Thursday, July 08, 2010 10:51 AM

To: DDC Taskings

Cc:

Subject: FW: 10071002 | Deferred Action

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Instructions: From FY07 - FY10- how many individuals who entered as students ultimately were granted deferred action. Please breakdown by FY

Please see attached on behalf of IPC.

Cleared by IRM.

Thank you,

(b)(6), (b)(7)(C)

(A) Operations Officer
Division of Information, Policy & Communications
Office of Enforcement & Removal Operations
500 12th St., SW, Room 2070, Washington, DC 20024

7/30/2010

2010FOIA6052.001112

(202) 732- (b)(6), (b)(7)(C) O / (202) 359- (b)(6), (b)(7)(C) C)

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From: (b)(6), (b)(7)(C) On Behalf Of DRO Taskings

Sent: Thursday, July 01, 2010 3:28 PM

To: (b)(6), (b)(7)(C)

Cc: DRO Taskings

Subject: 10071002 | Deferred Action (b)(6), (b)(7)(C)

Assigned Unit (s): IPC

From (Requesting Office): ERO Front Office

Task Due Date: Thursday, July 8, 2010 at 1200hrs

Instructions: From FY07 - FY10- how many individuals who entered as students ultimately were granted deferred action. Please breakdown by FY.

Thank you,

(b)(6), (b)(7)(C)
Taskings and Correspondence Unit

Department of Homeland Security

Immigration and Customs Enforcement

Enforcement and Removal Operations

500 12th Street SW | Washington D.C. 20024

202-732- (b)(6), (b)(7)(C) Office | 202-905- (b)(6), (b)(7)(C) Cellular

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7/30/2010

2010FOIA6052.001113

**Number of Students Granted "Deferred Action" FY2007-
FY2010**

	2007	2008	2009	2010	Total
Number of Students	7	11	14	6	38

*IIDS data as of 07/07/2010

**Please note that Admission Class Code is not a mandatory field and may not capture all student as specified.

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Monday, July 12, 2010 3:18 PM
To: DRO Taskings
Subject: FW: Human Rights Council Complaint Re: Immigration Detention of (b)(6), (b)(7)(C)
Importance: High

Dear DRO Taskings—

Did this inquiry from CRCL ever make it over to you folks through OESIMS? I did a search in OESIMS for ‘(b)(6), (b)(7)(C)’ and “Human Rights Council,” and didn’t see it. But, it appears that CRCL has repeatedly e-mailed the ICE Exec Sec mailbox. OPLA should review any response before it goes back to CRCL.

Thanks,

(b)(6), (b)(7)(C)

=====

(b)(6), (b)(7)(C)

Chief, Appellate and Protection Law Division
 Office of the Principal Legal Advisor
 U.S. Immigration and Customs Enforcement
 Office: 703-820-(b)(6), (b)(7)(C) | Cell: 202-904-(b)(6), (b)(7)(C)
 E-mail: (b)(6), (b)(7)(C)@dhs.gov

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From: (b)(6), (b)(7)(C) [mailto:(b)(6), (b)(7)(C)@dhs.gov]
Sent: Monday, July 12, 2010 3:12 PM
To: (b)(6), (b)(7)(C)
Subject: FW: Human Rights Council Complaint Re: Immigration Detention of (b)(6), (b)(7)(C)
Importance: High

fyi

From: (b)(6), (b)(7)(C) <CTR> On Behalf Of CRCL Exec Sec
Sent: Thursday, July 08, 2010 5:14 PM
To: ICE Exec Sec; ICE Opstasking
Cc: OGC Exec Sec (b)(6), (b)(7)(C) CRCL Exec Sec
Subject: FW: Human Rights Council Complaint Re: Immigration Detention of (b)(6), (b)(7)(C)
Importance: High

ICE ES,

One additional question to flag is whether DHS can confirm ongoing litigation in the US District Court in Providence, RI, (b)(6), (b)(7)(C). To the extent this may preempt some of (b)(6), (b)(7)(C) claims before the HRC Working Group, we’d want to include this up front in our response.

7/30/2010

2010FOIA6052.001115

Kind regards,

(b)(6), (b)(7)(C)
 [Redacted]
 Operations Analyst/Administrator
 U.S. Department of Homeland Security
 Office for Civil Rights and Civil Liberties
 (202) 357- [Redacted] Phone
 (202) 604- [Redacted] Mobile
 (202) 357-1188 Fax

From: [Redacted] <CTR> On Behalf Of CRCL Exec Sec
Sent: Thursday, July 08, 2010 3:33 PM
To: ICE Exec Sec; ICE Opstasking
Cc: [Redacted] CRCL Exec Sec
Subject: Human Rights Council Complaint Re: Immigration Detention of [Redacted]
Importance: High

ICE ES,

Please find below a request from US State Department concerning a complaint that was filed by the Human Rights Council regarding the detention of [Redacted].
 State is drafting a response and has specifically asked for the following information:

As much factual information concerning [Redacted] detention
 The veracity of his allegations
 DHS inquiry into those allegations.

Please provide any input to CRCL ExecSec as soon as possible but no later than COB July 9.

Very Respectfully,

(b)(6), (b)(7)(C)
 [Redacted]
 Operations Analyst/Administrator
 U.S. Department of Homeland Security
 Office for Civil Rights and Civil Liberties
 (202) 357- [Redacted] Phone
 (202) 604- [Redacted] Mobile
 (202) 357-1188 Fax

From: [Redacted] [mailto:[Redacted]@state.gov]
Sent: Wednesday, June 30, 2010 2:49 PM
To: [Redacted]@dhs.gov
Cc: [Redacted]
Subject: Human Rights Council complaint re: immigration detention of [Redacted]

Dear colleagues,

We have received a complaint from the Human Rights Council regarding certain allegations of abuses sustained by an individual, [Redacted], in the course of his immigration detention in facilities in Rhode Island, Massachusetts, and New York. [Redacted] was detained in these facilities from [Redacted] when he was

7/30/2010

deported for violation of INA sections [REDACTED] (b)(6) (b)(7)(C) The complaint states that a DHS investigation of his alleged mistreatment was ongoing at the time of deportation to [REDACTED] (b)(6) (b)(7)(C) appealed the BIA determination to the First Circuit from [REDACTED] (b)(6) (b)(7)(C) but lost.

The HRC Working Group on Communications will review the complaint in its session starting August 30. If the Working Group finds that the complaint appears to reveal a consistent pattern of human rights violations, the Working Group will forward the complaint along with its recommendations to its Situations Working Group for an assessment of next steps, which could include naming an independent expert or special rapporteur to investigate the conditions in question or bringing the matter before the full Council – outcomes we would very much wish to avoid.

Accordingly, L/HRR will prepare a response to be submitted by August 10 to allow adequate time for translation. Given the fact-dependent nature of this particular complaint, we need from you as much information as possible regarding [REDACTED] (b)(6) (b)(7)(C) detention, the veracity of his allegations, and the DHS inquiry into those allegations, in order to rebut the allegations that [REDACTED] (b)(6) (b)(7)(C) rights were violated and that any such violations constitute to a consistent pattern.

We have received some correspondence and detention-facility records, which were included with the complaint and are attached for your reference. I would be immensely grateful for any information you could provide and would kindly ask for a response, initial if need be, by July 15. Also, if there are others whom you think may have pertinent information, please forward this request to them. Please give me a call at any time if you wish to discuss this request.

Sincere thanks,

[REDACTED] (b)(6) (b)(7)(C)
[REDACTED] (b)(6) (b)(7)(C)
Attorney Adviser
Office of the Legal Adviser
Human Rights and Refugees
(202) 647- [REDACTED] (b)(6) (b)(7)(C)
[REDACTED] (b)(6) (b)(7)(C) [REDACTED] (b)(6) (b)(7)(C)

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C) [redacted] @dhs.gov]
Sent: Friday, July 09, 2010 9:51 AM
To: (b)(6), (b)(7)(C) [redacted]
Cc: DRO Taskings; (b)(6), (b)(7)(C) [redacted]
Subject: RE: Human Rights Council complaint re: immigration detention of Edwardo Mathew
Attachments: Mathew R&R (070610).pdf; Mathew Complaint (060109).pdf

The proceedings are indeed still pending. The last action was from earlier this week (R&R from the Magistrate Judge allowing (b)(6), (b)(7)(C) [redacted] leave to amend his complaint). Here's the PACER docket summary, along with the R&R and complain, filed June 1, 2009:

(b)(6), (b)(7)(C)

(b)(6) (b)(7)c

===== (b)(7)(C)

Chief, Appellate and Protection Law Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Office: 703-820- (b)(6) | Cell: 202-904- (b)(6)
E-mail: (b)(6)@dhs.gov (b)(6)

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2010FOIA002.00119

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From: [redacted] [mailto:[redacted]@dhs.gov]

Sent: Friday, July 09, 2010 9:12 AM

To: [redacted]

Cc: DRO Taskings; Agronick, Lois

Subject: RE: Human Rights Council complaint re: immigration detention of [redacted]

1 other question that has come up- can DHS (ICE) confirm ongoing litigation in the US District Court in Providence, RI, [redacted] This can preempt much of the necessary language in the response.

Thanks,

From: [redacted] [mailto:[redacted]@dhs.gov]

Sent: Thursday, July 08, 2010 4:44 PM

To: [redacted]

Cc: DRO Taskings [redacted]

Subject: RE: Human Rights Council complaint re: immigration detention of [redacted]

Wonderful. Given the nature of the inquiry, a formal ExecSec tasking seems appropriate here.
Thanks.

=====
[redacted]
Chief, Appellate and Protection Law Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Office: 703-820-[redacted] | Cell: 202-904-[redacted]
E-mail: [redacted]@dhs.gov

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From: [redacted] [mailto:[redacted]@dhs.gov]

Sent: Thursday, July 08, 2010 4:44 PM

To: [redacted]

Cc: DRO Taskings; [redacted]

Subject: Re: Human Rights Council complaint re: immigration detention of [redacted]

This is great- I will forward this to State when all searches for information are complete.
I have also formally requested a response through my Exec Sec to ICE ExecSec, so hopefully they will go through you on this.

If I get a different poc from ICE ES, I will let you know.

Thanks,

From: [redacted]@dhs.gov>

2010FOIA6052.001120

7/30/2010

To: [REDACTED] <[REDACTED]@dhs.gov> [REDACTED] <[REDACTED]@dhs.gov>
Cc: DRO Taskings; [REDACTED]
Sent: Thu Jul 08 16:36:41 2010
Subject: RE: Human Rights Council complaint re: immigration detention of Edwardo Mathew

While the complaint appears focused on the detention issues that you're touching base with DRO Taskings on, I took the liberty of having one of my attorneys dig in to the history of the legal proceedings. Her assessment, with which I concur, is that [REDACTED]

The transcript exceeds 700 pages, and

For your reference, I've attached the EOIR and First Circuit decisions.

Here is a more detailed synopsis:

[REDACTED]

7/30/2010

(b)(5), (b)(6), (b)(7)c

I hope this information is helpful.

Regards,

(b)(6), (b)(7)(C)

=====

(b)(6), (b)(7)(C)

Chief, Appellate and Protection Law Division

Office of the Principal Legal Advisor

U.S. Immigration and Customs Enforcement

Office: 703-820 (b)(6), (b)(7)(C) Cell: 202-904 (b)(6), (b)(7)(C)

E-mail: (b)(6), (b)(7)(C) @dhs.gov

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From: (b)(6), (b)(7)(C) [mailto:(b)(6), (b)(7)(C)@dhs.gov]

Sent: Thursday, July 08, 2010 4:22 PM

To: (b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C)

Subject: RE: Human Rights Council complaint re: immigration detention of (b)(6), (b)(7)(C)

We are working on getting a response from ICE on this.
Please stand by.

7/30/2010

2010FOIA6052.001122

Best,

(b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Senior Policy Advisor
U.S. Department of Homeland Security
Office for Civil Rights and Civil Liberties
Washington, D.C.
202-357-
@dhs.gov

PLEASE NOTE MY NEW PHONE NUMBER

From: [mailto: (b)(6), (b)(7)(C)@state.gov]
Sent: Wednesday, July 07, 2010 1:23 PM
To: (b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)
Subject: RE: Human Rights Council complaint re: immigration detention of (b)(6), (b)(7)(C)

Noting that a response is requested by next Friday, could someone confirm that DHS is seized of this issue and provide a POC?

One additional question to flag is whether DHS can confirm ongoing litigation in the US District Court in Providence, RI, (b)(6), (b)(7)(C). To the extent this may preempt some of Mr. (b)(6), (b)(7)(C) claims before the HRC Working Group, we'd want to include this up front in our response.

Thanks,

(b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Office of the Legal Adviser | Human Rights and Refugees |
☎ (202) 647- (b)(6), (b)(7)(C) | ☐ unclass: (b)(6), (b)(7)(C) lass: (b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Wednesday, June 30, 2010 2:49 PM
To: (b)(6), (b)(7)(C)@dhs.gov'; (b)(6), (b)(7)(C)@dhs.gov'; (b)(6), (b)(7)(C)@dhs.gov'
Cc: (b)(6), (b)(7)(C)
Subject: Human Rights Council complaint re: immigration detention of (b)(6), (b)(7)(C)

Dear colleagues,

We have received a complaint from the Human Rights Council regarding certain allegations of abuses sustained by an individual, (b)(6), (b)(7)(C) in the course of his immigration detention in facilities in Rhode Island, Massachusetts, and New York. (b)(6), (b)(7)(C) was detained in these facilities from (b)(6), (b)(7)(C), when he was deported for violation of INA sections (b)(6), (b)(7)(C). The complaint states that a DHS investigation of his alleged mistreatment was ongoing at the time of deportation to (b)(6), (b)(7)(C) appealed the BIA determination to the First Circuit from (b)(6), (b)(7)(C) but lost.

The HRC Working Group on Communications will review the complaint in its session starting August 30. If the Working Group finds that the complaint appears to reveal a consistent pattern of human rights violations, the Working Group will forward the complaint along with its recommendations to its Situations Working Group for an assessment of next steps, which could include naming an independent expert or special rapporteur to investigate the conditions in question or bringing the matter before the full Council – outcomes we would very much wish to avoid.

2010FOIA6052.001123

7/30/2010

Accordingly, L/HRR will prepare a response to be submitted by August 10 to allow adequate time for translation. Given the fact-dependent nature of this particular complaint, we need from you as much information as possible regarding [REDACTED] detention, the veracity of his allegations, and the DHS inquiry into those allegations, in order to rebut the allegations that [REDACTED] rights were violated and that any such violations constitute to a consistent pattern.

We have received some correspondence and detention-facility records, which were included with the complaint and are attached for your reference. I would be immensely grateful for any information you could provide and would kindly ask for a response, initial if need be, by July 15. Also, if there are others whom you think may have pertinent information, please forward this request to them. Please give me a call at any time if you wish to discuss this request.

Sincere thanks,

[REDACTED]
(b)(6), (b)(7)(C)
[REDACTED]
(b)(6), (b)(7)(C)

Attorney Adviser
Office of the Legal Adviser
Human Rights and Refugees
(202) 647- [REDACTED]
[REDACTED]
(b)(6), (b)(7)(C)
[REDACTED]
(b)(6), (b)(7)(C)

7/30/2010

2010FOIA6052.001124

(b)(6), (b)(7)(C)
 From: (b)(6), (b)(7)(C)
 Sent: Wednesday, July 14, 2010 1:34 PM
 To: DRO Taskings
 Subject: RE: 10071030 | ICE Delegation Order

fine

(b)(6), (b)(7)(C)
 Acting Chief of Staff
 Office of the Director
 Enforcement & Removal Operations
 Work (202) 732- (b)(6)
 Fax (202) 732-3115 (b)(6)

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(b)(6), (b)(7)(C)
 From: (b)(6), (b)(7)(C) On Behalf Of DRO Taskings
 Sent: Wednesday, July 14, 2010 12:48 PM
 To: (b)(6), (b)(7)(C)
 Cc: DRO Taskings
 Subject: RE: 10071030 | ICE Delegation Order

Hi (b)(6), (b)(7)(C)

Who should we pick as the POC? (b)(6), (b)(7)(C) from IPC?

Thank you,

(b)(6), (b)(7)(C)
 Taskings and Correspondence Unit
 Department of Homeland Security
 Immigration and Customs Enforcement
 Enforcement and Removal Operations
 500 12th Street SW | Washington D.C. 20024
 202-732- (b)(6) Office | 202-905- (b)(6) Cellular

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(b)(6), (b)(7)(C)
 From: (b)(6), (b)(7)(C)
 Sent: Wednesday, July 14, 2010 12:31 PM
 To: DRO Taskings
 Subject: FW: 10071030 | ICE Delegation Order

Cleared by (b)(6), (b)(7)(C)

(b)(7)(C)
 Acting Chief of Staff
 Office of the Director
 Enforcement & Removal Operations
 Work (202) 732-
 Fax (202) 732-3115

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From: (b)(7)(C)
Sent: Wednesday, July 14, 2010 10:58 AM
To: (b)(7)(C)
Subject: FW: 10071030 | ICE Delegation Order

Please see updated attachment with SC's edits.

From: (b)(7)(C) On Behalf Of DRO Taskings
Sent: Wednesday, July 14, 2010 10:55 AM
To: (b)(7)(C)
Cc: DRO Taskings
Subject: FW: 10071030 | ICE Delegation Order

Hi (b)(7)(C)

Sorry, I just added SC's contribution.

Thank you,

(b)(7)(C)
 Taskings and Correspondence Unit
 Department of Homeland Security
 Immigration and Customs Enforcement
 Enforcement and Removal Operations
 500 12th Street SW | Washington D.C. 20024
 202-732- Office | 202-905- Cellular

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From: (b)(7)(C) On Behalf Of DRO Taskings
Sent: Tuesday, July 13, 2010 6:23 PM
To: (b)(7)(C)
Cc: DRO Taskings
Subject: 10071030 | ICE Delegation Order

Request:

Attached is the latest revision to the delegation order, but with back and forth comments with DHS OGC etc. taken out. It's a clean version for you to look at. We are not requesting a re-write at this time; basically to get

7/30/2010

started we would like to an answer to just one question from your program's perspective:

Are all the authorities you use or need included in this draft?

Please let us know if anything is missing. Once we verify the universe of authorities ICE needs, we will be able to re-work the delegation order as appropriate. We expect that as realignment goes forward, there may need to be significant revisions to existing ICE delegation orders that further delegate authorities to HSI and ERO. This delegation from the Secretary to ICE will be the basis for that further delegation, so we need to be sure it covers everything.

We'd also appreciate your identifying a POC to work with as we go forward with the project. Thanks for your help.

Response:

Please see the attachment.

DRM: "no comment"

POC: [REDACTED] (b)(6), (b)(7)(C)

Cleared by AD DRM [REDACTED] (b)(6), (b)(7)(C)

FIELD OPS: "no comment"

POC: **Staff Officer** [REDACTED] (b)(6), (b)(7)(C)

Cleared by DAD (West)

ADE: Response below:

ADE reviewed the attached and inserted changes.

ADE also recommends adding language referring to expedited removal, as it is absent in this document

POC: [REDACTED] (b)(6), (b)(7)(C)

Cleared (a)ADE [REDACTED] (b)(6), (b)(7)(C)

AD IPC

IPC reviewed the attached and inserted edits.

POC: [REDACTED] (b)(6), (b)(7)(C)

[REDACTED] (b)(6), (b)(7)(C)
Taskings & Correspondence Unit
Enforcement and Removal Operations
Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street SW | Washington, DC 20024 | 202-732- [REDACTED] (b)(6), (b)(7)(C)

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From: [REDACTED] (b)(6), (b)(7)(C)

Sent: Tuesday, July 13, 2010 5:54 PM

To: DRO Taskings

2010FOIA6052.001127

7/30/2010

Cc: [REDACTED]
 Subject: 10071030 | ICE Delegation Order

ERO-T: Please note. IPC previously provided a response on behalf of IPC. Please see attached for the combined ERO response.

DRM: "no comment"

POC: [REDACTED]

Cleared by AD DRM [REDACTED]

FIELD OPS: "no comment"

POC: Staff Officer [REDACTED]

Cleared by DAD (West) [REDACTED]

ADE: Response below:

ADE reviewed the attached and inserted changes.

ADE also recommends adding language referring to expedited removal, as it is absent in this document

POC: [REDACTED]

Cleared (a)ADE [REDACTED]

AD IPC

IPC reviewed the attached and inserted edits.

POC: [REDACTED]

Thank you,

(A) Operations Officer
 Division of Information, Policy & Communications
 Office of Enforcement & Removal Operations
 500 12th St., SW, Room 2070, Washington, DC 20024
 (202) 732- [REDACTED] O / (202) 359- [REDACTED] C

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From: [REDACTED] On Behalf Of DRO Taskings

Sent: Tuesday, July 13, 2010 3:32 PM

To: [REDACTED]

Cc: [REDACTED] DRO Taskings

Subject: FW: 10071030 | ICE Delegation Order

Good afternoon [REDACTED]

Please see the attached responses from the different programs. It appears MSD still owes you a response.

Thank you,

Taskings and Correspondence Unit
Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations
500 12th Street SW | Washington D.C. 20024
202-732- (b)(6) Office | 202-905- (b)(6) Cellular

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From: DRO Taskings
Sent: Thursday, July 08, 2010 4:10 PM
To: Tasking, DIHS; (b)(6), (b)(7)(C)

Cc: DRO Taskings
Subject: 10071030 | ICE Delegation Order

Assigned Unit (s): DIHS
DRM
Enforcement
Field Ops
IPC (lead)
Mission Support
Secure Communities

From (Requesting Office): ICE Policy

Task Due Date: Tuesday, July 13, 2010 at 1500hrs

Instructions: Attached is the latest revision to the delegation order, but with back and forth comments with DHS OGC etc. taken out. It's a clean version for you to look at. We are not requesting a re-write at this time; basically to get started we would like to an answer to just one question from your program's perspective:

Are all the authorities you use or need included in this draft?

Please let us know if anything is missing. Once we verify the universe of authorities ICE needs, we will be able to re-work the delegation order as appropriate. We expect that as realignment goes forward, there may need to be significant revisions to existing ICE delegation orders that further delegate authorities to HSI and ERO. This delegation from the Secretary to ICE will be the basis for that further delegation, so we need to be sure it covers everything.

We'd also appreciate your identifying a POC to work with as we go forward with the project. Thanks for your help.

Thank you,

2010FOIA6052.001129

7/30/2010

Taskings and Correspondence Unit

Department of Homeland Security

Immigration and Customs Enforcement

Enforcement and Removal Operations

500 12th Street SW | Washington, D.C. 20024

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From: (b)(6), (b)(7)(C)**Sent:** Thursday, July 08, 2010 3:03 PM**To:** (b)(6), (b)(7)(C) (OI); (b)(6), (b)(7)(C)**Cc:** (b)(6), (b)(7)(C) #ICE OI Tasking; DRO Taskings; (b)(6), (b)(7)(C)**Subject:** 10071030 | ICE Delegation Order (b)(6), (b)(7)(C)

We are looking at revising the overarching delegation of authority from the Secretary to ICE, to ensure that as ICE's realignment goes forward, the delegation order matches up with ICE's roles and responsibilities.

Attached is the latest revision to the delegation order, but with back and forth comments with DHS OGC etc. taken out. It's a clean version for you to look at. We are not requesting a re-write at this time; basically to get started we would like to an answer to just one question from your program's perspective:

Are all the authorities you use or need included in this draft?

Please let us know if anything is missing. Once we verify the universe of authorities ICE needs, we will be able to re-work the delegation order as appropriate. We expect that as realignment goes forward, there may need to be significant revisions to existing ICE delegation orders that further delegate authorities to HSI and ERO. This delegation from the Secretary to ICE will be the basis for that further delegation, so we need to be sure it covers everything.

We'd also appreciate your identifying a POC to work with as we go forward with the project. Thanks for your help.

(b)(6), (b)(7)(C)
Deputy Director/Chief, Operations & International Division

ICE Office of Policy

500 12th Street, S.W.

Washington, D.C. 20536

+1 202.732- (b)(6)

Department of Homeland Security

Delegation Number: 7030.3

Issue Date:

**DELEGATION OF
AUTHORITY TO THE
ASSISTANT SECRETARY
FOR U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT**

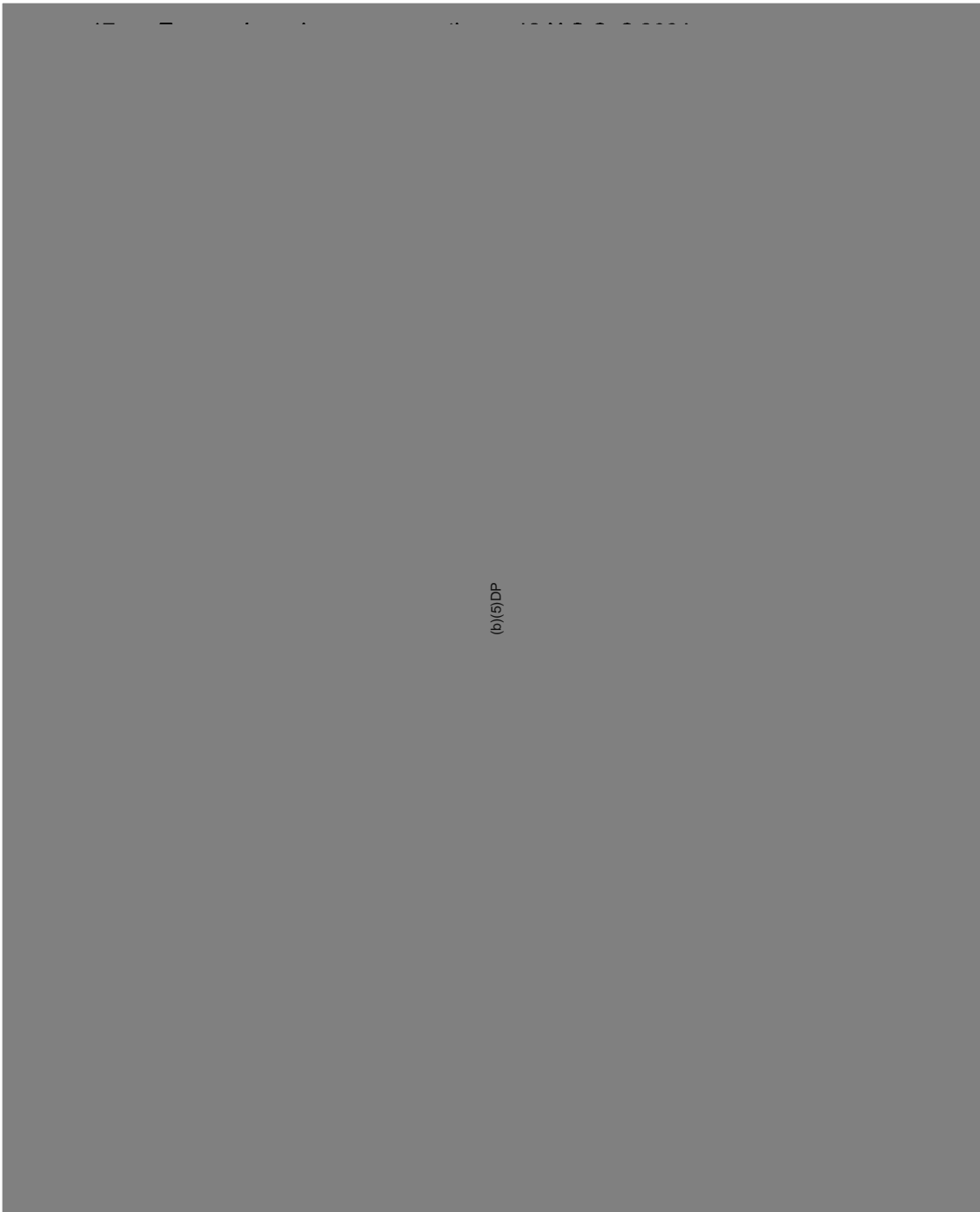
I. Purpose

(b)(5)DP

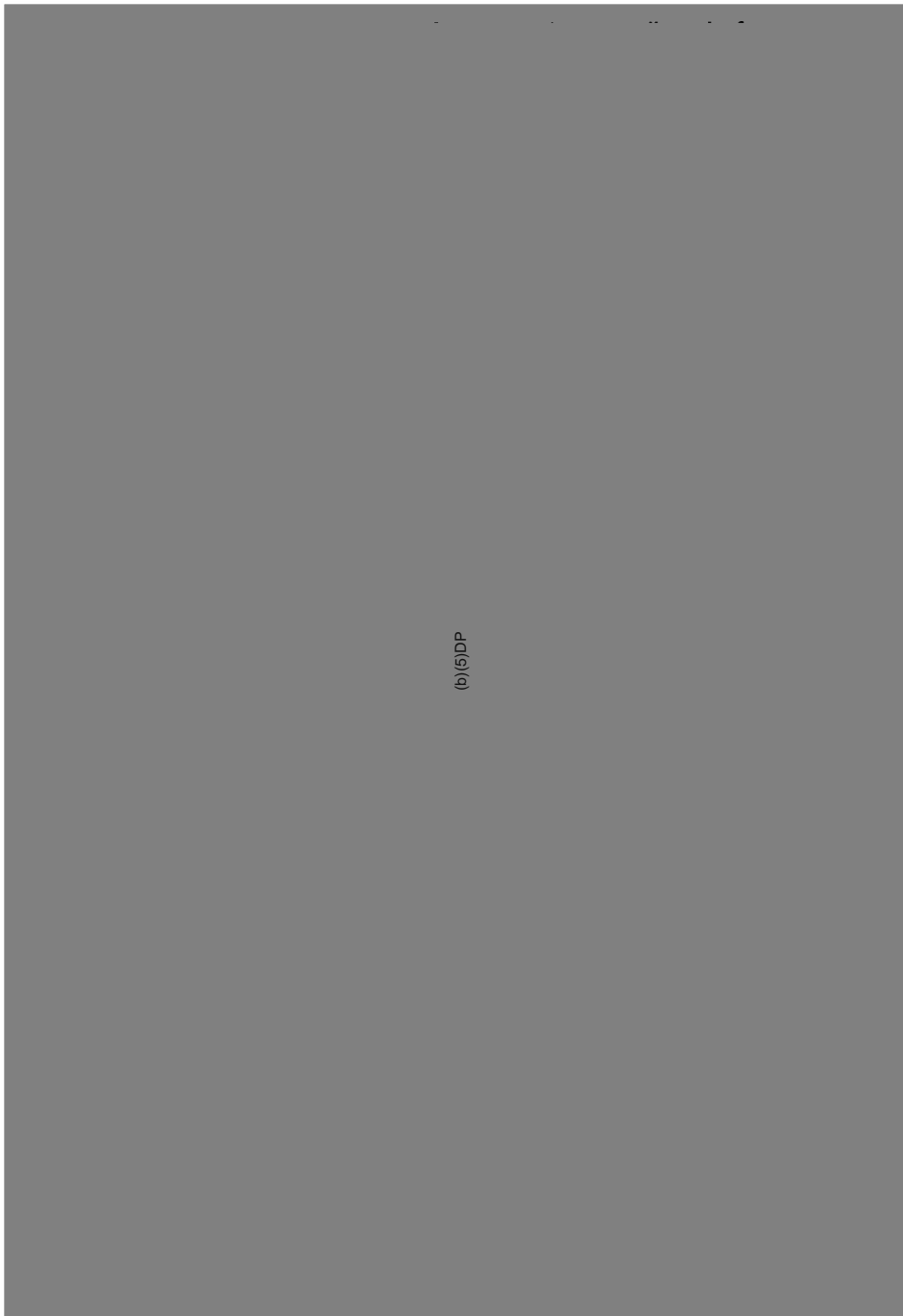
II. Delegations

(b)(5)DP

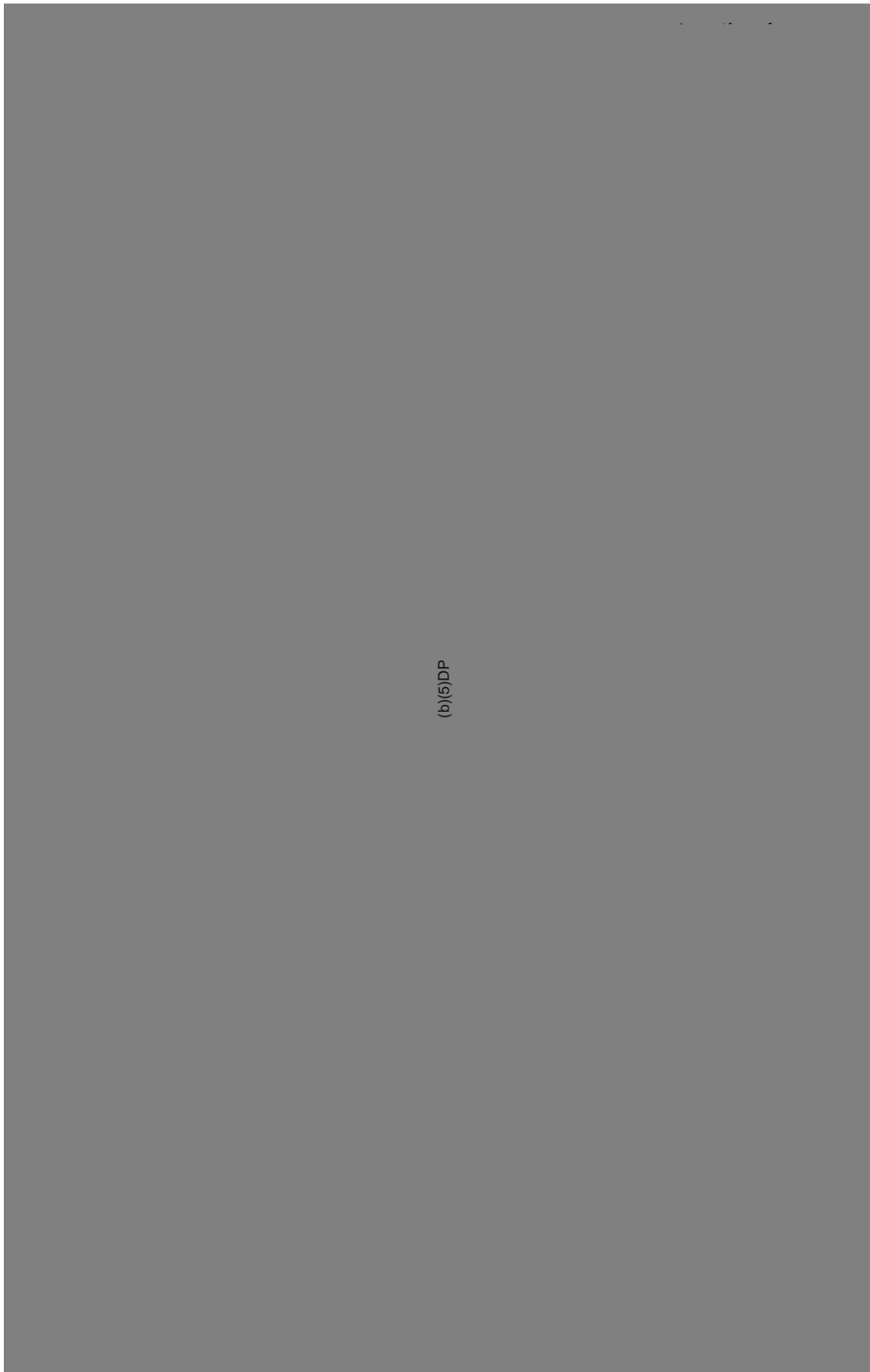
(b)(5)DP



(b)(5)DP

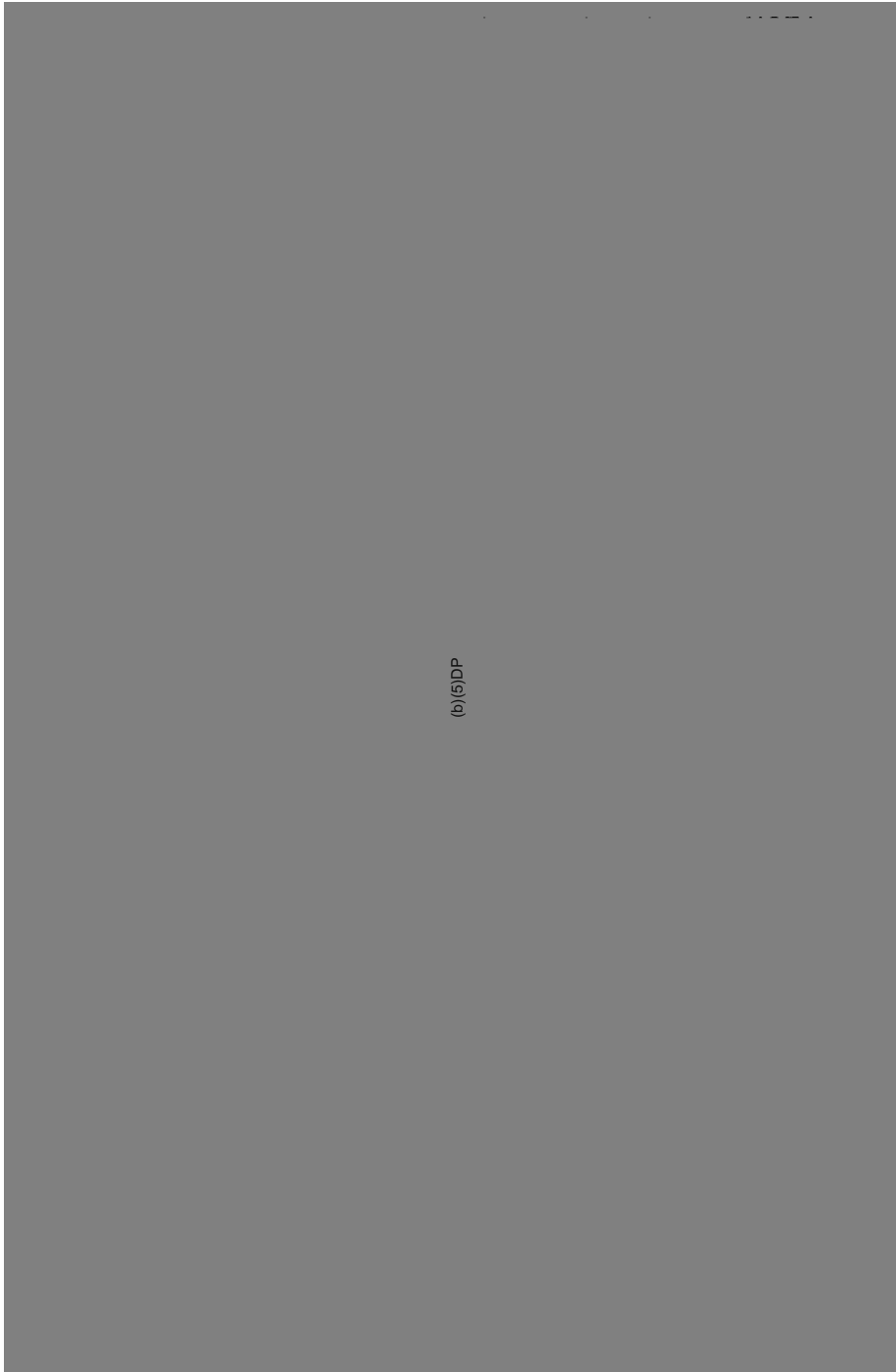


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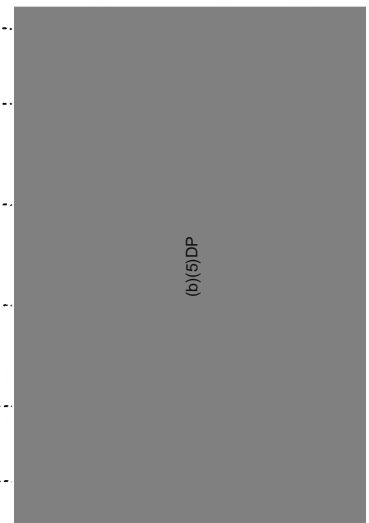


(b)(5)DP

(b)(5)DP



(b)(5)DP



(b)(5)DP

(b)(5)DP

(b)(5)DP

III. Reservations

(b)(5)DP

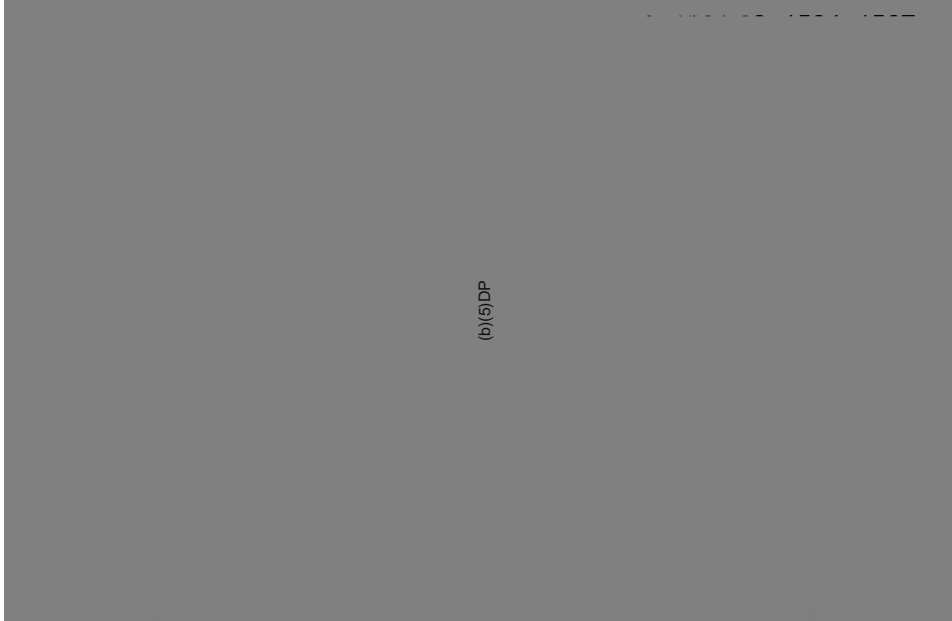
(b)(5)DP

IV. Re-delegation

(b)(5)DP

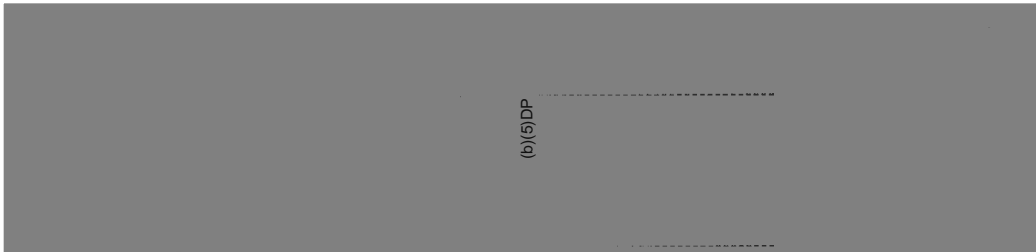
V. Authorities

(b)(5)DP



(b)(5)DP

VI. Credentials

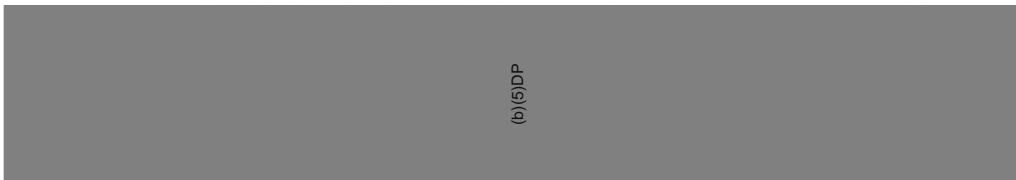


(b)(5)DP



(b)(5)DP

VII. Policy Documents and Forms



(b)(5)DP

VIII. Office of Primary Interest



(b)(5)DP

IX. Cancellation

(b)(5)DP

(b)(5)DP

(b)(5)DP

Page 7: [1] Deleted

10/9/2007 11:30:00 AM

(b) (6), (b) (7)(C)

(b) (5) DP

Follow up

From: [REDACTED] on behalf of DRO Taskings
Sent: Tuesday, July 13, 2010 6:19 PM
To: OIATASKING; [REDACTED]@dhs.gov
Cc: [REDACTED] Loisele, Mary F; [REDACTED]
Subject: 10042067 | LEPB Request: State and Local unresolved paroles
Attachments: LEPB Tasking.xls

The attached has been cleared by [REDACTED] Deputy's Chief of Staff.

Taskings & Correspondence Unit
 Enforcement and Removal Operations
 Immigration and Customs Enforcement
 U.S. Department of Homeland Security
 500 12th Street SW | Washington, DC 20024 | 202-732-[REDACTED]

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From: OIATASKING
Sent: Friday, April 16, 2010 11:12 AM
To: [REDACTED] (OI); DRO Taskings; #ICE OI Tasking
Subject: 10042067 | LEPB Request: State and Local unresolved paroles
Importance: High

DI:
DRO:

Apologies. Attached are the spreadsheets that should have been attached to the OIA LEPB tasking.

Please distribute to the field, along with the request.

Thank you!

OIATASKING
 Tel: (202) 732-[REDACTED]

To: All SAC Parole Coordinators and DRO FODs
From: [REDACTED] Section Chief, Law Enforcement Parole Branch (LEPB), Office of International Affairs (OIA)
Task Due Dates: On or before 7/19/2010, to Management Program Analyst [REDACTED]@dhs.gov
Background: In January 2009, at the request of the Deputy Assistant Secretary, Operations, the LEPB began an initiative to review all terminated Significant Public Benefit Paroles (SPBP). During the review, numerous unresolved paroles were identified as being issued to various state and local law enforcement agencies. Recent data reports were generated in the Parole Case Tracking System (PCTS) to identify all terminated paroles granted to state and local law enforcement agencies for the period January 1, 1998 to December 31, 2009. Those paroles were then vetted through various ICE indices resulting in a significant reduction of

7/20/2010

unresolved parole cases. However, some cases remain unresolved. Those unresolved cases will be returned to the respective state and local law enforcement agencies for resolution by the ICE component.

Instructions: The LEPB will provide each Special Agent in Charge (SAC) office with an updated spreadsheet of names and alien numbers of all subjects paroled by state and local law enforcement agencies contained within their respective jurisdiction. SAC Parole Coordinators are requested to liaise with the state and local agencies and request appropriate action be taken to properly resolve the cases.

The SAC office and/or DRO Fugitive Operations are requested to coordinate with the state and local agency to attempt to locate and take appropriate action to properly resolve the cases. Satisfactory case resolution can include: arrest of subject; identifying subject's departure from the U.S.; identifying subject as being incarcerated; documenting that subject adjusted to lawful status; documenting subject has been placed into removal proceedings; or any other manner which shows evidence the parolee is not otherwise unlawfully present in the U.S. The LEPB further requests that the assisting ICE component create TECS subject records for all parolees not resolved. Finally, the assisting ICE component is requested to advise the state and local agencies to use the attached spreadsheet for tracking purposes.

Requirements: Once the state and local agencies complete the required spreadsheet, the ICE SAC Parole Coordinator is requested to submit the document to the LEPB by **7/19/2010** showing the final disposition of each parole case.

Tasking Program Office POC Information: LEPB Section Chief (b)(6), (b)(7)(C) 202-732- (b)(6), (b)(7)(C) LEPB fax 202-732-8204.

ATL Local and State Unresolved Cases							
Agency:	BCSAO	Year 2006					
FCO ID	Parole #	A Number	Applicant Name	COB	DOB:	Assigned To:	Tel.#
ATL	(b)(6), (b)(7)(C)			MEXICO	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	843-470-(b)(6), (b)(7)(C)
Agency:	HCD AO	Year 2006					
FCO ID	Parole #	A Number	Applicant Name	COB	DOB:	Assigned To:	Tel.#
ATL	(b)(6), (b)(7)(C)			MEXICO	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	770-954-(b)(6), (b)(7)(C)
ATL				MEXICO			770-954-(b)(6), (b)(7)(C)
ATL				MEXICO			770-954-(b)(6), (b)(7)(C)
Agency:	FCDA	Year 2007					
FCO ID	Parole #	A Number	Applicant Name	COB	DOB:	Assigned To:	Tel.#
ATL	(b)(6), (b)(7)(C)			MEXICO	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	404-730-(b)(6), (b)(7)(C)

ATL	(b)(6), (b)(7)(C)			MEXICO	(b)(6), (b)(7)(C)		404-730	(b)(6), (b)(7)(C)
	Agency:	GBI	Year 2009					
<u>FCO ID</u>	<u>Parole #</u>	<u>A Number</u>	<u>Applicant Name</u>	<u>COB</u>	<u>DOB:</u>	<u>Assigned To:</u>	<u>Tel.#</u>	
ATL	(b)(6), (b)(7)(C)			United Kingdom	(b)(6), (b)(7)(C)		404-346	(b)(6), (b)(7)(C)
	Agency:	GCDAO	Year 2009					
<u>FCO ID</u>	<u>Parole #</u>	<u>A Number</u>	<u>Applicant Name</u>	<u>COB</u>	<u>DOB:</u>	<u>Assigned To:</u>	<u>Tel.#</u>	
ATL	(b)(6), (b)(7)(C)			Mexico	(b)(6), (b)(7)(C)		770-82	(b)(6), (b)(7)(C)
	Agency:	NCPD	Year 2009					
<u>FCO ID</u>	<u>Parole #</u>	<u>A Number</u>	<u>Applicant Name</u>	<u>COB</u>	<u>DOB:</u>	<u>Assigned To:</u>	<u>Tel.#</u>	
ATL	(b)(6), (b)(7)(C)			Guatemala	(b)(6), (b)(7)(C)		704-358	(b)(6), (b)(7)(C)
Unresolved Cases 9								

Comments
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(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)

Sent: Tuesday, July 06, 2010 10:49 AM

To: DRO Taskings

Subject: FW: ***DUE into Share Point July 6 2010 at 1100hrs***FW: DRM CLEAR: 10071011 | New task from HQEXOPS: 47237 - Review and Comment - Letters regarding Asylum for Mexican Nationals FolderID 47237

Follow Up Flag: Follow up

Flag Status: Orange

Attachments: Commissioner Bersin Letter.pdf; Sisters of St. Francis.pdf; Catholic org response re Mexican asylum seekers 7 1 10 for Exec Sec.doc

Cleared by (b) (6), (b) (7)(C)

(b) (7)(C)

Acting Chief of Staff
Office of the Director
Enforcement & Removal Operations
Work (202) 732-3115
Fax (202) 732-3115

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From: (b) (6), (b) (7)(C)

Sent: Tuesday, July 06, 2010 9:32 AM

To: (b) (6), (b) (7)(C)

Subject: FW: ***DUE into Share Point July 6 2010 at 1100hrs***FW: DRM CLEAR: 10071011 | New task from HQEXOPS: 47237 - Review and Comment - Letters regarding Asylum for Mexican Nationals FolderID 47237

OAS req – response is basic

Mr. (b) (6), (b) (7)(C)
Deputy Chief of Staff (A)
Office of the Director
Enforcement & Removal Operations
Work (202) 732-3115
Fax (202) 732-3115

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From: (b) (6), (b) (7)(C) **On Behalf Of** DRO Taskings

Sent: Friday, July 02, 2010 5:02 PM

To: (b) (6), (b) (7)(C)

Cc: DRO Taskings

Subject: ***DUE into Share Point July 6 2010 at 1100hrs***FW: DRM CLEAR: 10071011 | New task from HQEXOPS: 47237 - Review and Comment - Letters regarding Asylum for Mexican Nationals FolderID 47237

Mr. (b) (6), (b) (7)(C)

Request:

Please review and comment on the attached two letters requesting asylum for Mexican nationals. In addition to reviewing the highlighted section, please add any language you think necessary regarding the application of

the new parole guidelines and assure the Sisters and CCAO that determinations are based on an assessment of identity, flight risk, and danger to the community (if we have not appropriately done so).

Response:

Please see the attachment. IPC & Enforcement has no comments.

Cleared by (a) AD DRM [REDACTED]
 Reviewed by OO DRM [REDACTED]
 Cleared by AD [REDACTED]
 Cleared (a) AD [REDACTED] 7/2/10

Taskings & Correspondence Unit
 Enforcement and Removal Operations
 Immigration and Customs Enforcement
 U.S. Department of Homeland Security
 500 12th Street SW | Washington, DC 20024 | 202-732- [REDACTED]

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From: [REDACTED]
Sent: Friday, July 02, 2010 4:53 PM
To: DRO Taskings
Cc: [REDACTED]
Subject: DRM CLEAR: 10071011 | New task from HQEXOPS: 47237 - Review and Comment - Letters regarding Asylum for Mexican Nationals FolderID 47237

Attached please find DRM's updates to the letter.

Cleared by (a) AD DRM [REDACTED]
 Reviewed by OO DRM [REDACTED]

From: [REDACTED]
Sent: Friday, July 02, 2010 12:42 PM
To: RMD Taskings; [REDACTED] (CTR)
Cc: [REDACTED]
Subject: RMD SENT: 10071011 | New task from HQEXOPS: 47237 - Review and Comment - Letters regarding Asylum for Mexican Nationals FolderID 47237

Please see the attachments and the tasking below, and respond no later than COB today.

Thank you,
 [REDACTED]

From: [REDACTED] On Behalf Of DRO Taskings
Sent: Friday, July 02, 2010 12:14 PM
To: [REDACTED]
Cc: DRO Taskings
Subject: 10071011 | New task from HQEXOPS: 47237 - Review and Comment - Letters regarding Asylum for Mexican Nationals FolderID 47237

2010FOIA6052.001149

7/20/2010

Assigned Unit (s): DRM | Enforcement | IPC

From (Requesting Office): OAS

Task Due Date: Tuesday, July 6, 2010 at 0800hrs

Instructions: Please review and comment on the attached two letters requesting asylum for Mexican nationals. In addition to reviewing the highlighted section, please add any language you think necessary regarding the application of the new parole guidelines and assure the Sisters and CCAO that determinations are based on an assessment of identity, flight risk, and danger to the community (if we have not appropriately done so).

Background:

DHS tasked USCIS with responding to two letters requesting asylum for Mexican nationals. DHS stated that USCIS should send their responses to ICE to make sure the information about ICE is accurate. Both responses are identical and contain a highlighted section requesting ICE's review and approval.

The first response is to the Sisters. The second response is to Columban Center for Advocacy and Outreach (CCAO).

Thank you,

(b)(6), (b)(7)(C)
Taskings and Correspondence Unit
Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations
500 12th Street SW | Washington, D.C. 20024
202-732- (b)(6), (b)(7)(C) Office | 202-905- (b)(6), (b)(7)(C) Cellular

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From: iceopstasking@sp.ice.dhs.gov [mailto:iceopstasking@sp.ice.dhs.gov]

Sent: Friday, July 02, 2010 11:59 AM

To: DRO Taskings; (b)(6), (b)(7)(C)

Subject: 10071011 | New task from HQEXOPS: 47237 - Review and Comment - Letters regarding Asylum for Mexican Nationals FolderID 47237

Please do not reply to this e-mail. It is from an unmonitored system account. All action should occur within OESIMS.

ICE OPStasking External Request

To: HSI, HSI-IA, ERO, Policy, OPLA

Lead Program: HSI

* Lead program office must coordinate and consolidate all program office comments into one ICE response within the given time period, then upload into the Sharepoint OESIMS folder as the final draft.

From: [REDACTED] (b)(7)(C)
USCIS Office of the Executive Secretariat
(202) 272-[REDACTED] Office) (b)(6), (b)(7)(C)

Instructions:

Please review and comment on the attached two letters requesting asylum for Mexican nationals. In addition to reviewing the highlighted section, please add any language you think necessary regarding the application of the new parole guidelines and assure the Sisters and CCAO that determinations are based on an assessment of identity, flight risk, and danger to the community (if we have not appropriately done so).

Background:

DHS tasked USCIS with responding to two letters requesting asylum for Mexican nationals. DHS stated that USCIS should send their responses to ICE to make sure the information about ICE is accurate. Both responses are identical and contain a highlighted section requesting ICE's review and approval.

The first response is to the Sisters. The second response is to Columban Center for Advocacy and Outreach (CCAO).

Requirements:

For documents leaving ICE, programs must substitute 'ICE' in place of programmatic designations (ex. SAC/NY, DRO/MI etc.), the exception being ICE Attaché offices where appropriate.

When making changes to a document that your program did not author please use track changes and document versioning unless otherwise directed. (Please coordinate with the lead program to ensure you are not saving an older version with your changes on top of another program's version with their changes as this will cancel out the other programs saved changes. This problem can be avoided if only one program has the document open at a time or by e-mailing your version to the lead program for a document merge.)

Programs must ensure your program is identified when using the "comments" function when editing a document. LEAD PROGRAM: Please ensure you only consolidate comments which contain programmatic identifiers – comments lacking identifiers should be referred to the required coordinator(s) for correction.

If you believe a program with equities has been inadvertently overlooked please contact OPStasking as soon as possible.

Per the Assistant Secretary, please indicate who cleared the document/response (CoS level or above), including contact information – see below:

Cleared By: Tele-()

Tasking Program Office POC Information:

- [REDACTED] (b)(7)(C)
USCIS Office of the Executive Secretariat
(202) 272-[REDACTED] Office) (b)(6), (b)(7)(C)

Thank you,

(b)(7)(C)
Special Assistant
ICE OPStasking
Office of the Assistant Secretary
U.S. Immigration and Customs Enforcement
Voice: (202)732-
Mobile: (202)486
dhhs.gov

Unclass
HSDN:
JWICS

Original Message:

This message is part of an automated workflow, please do not change the text in the subject line when responding or forwarding the message.

Folder Subject: 47237 - Review and Comment - Letters regarding Asylum for Mexican Nationals
Folder Originator: USCIS
Workflow ID: bf38cba7-d674-453a-ab05-d072a17ddd2d
Folder Location:
Task ID: 242161
Workflow Task ID: e7d0c070-23b8-4283-94c5-55792dfba5a1
Assignment ID: 1087222a-9d17-4c83-9d47-9c5751681514



COLUMBAN CENTER FOR ADVOCACY AND OUTREACH

May 19, 2010

Commissioner Alan Bersin
Commissioner of U.S. Customs and Border Protection
U.S. Department of Homeland Security
Washington, D.C. 20528
Fax: 202-344-1380

Dear Commissioner Bersin:

We write today to respectfully request you to use your discretionary authority to oversee the authorization of petitions for political asylum for Mexican nationals who are fleeing violence. As a ministry of the Missionary Society of St. Columban and an international, Catholic mission society of priests and lay missionaries, the Columban Center for Advocacy and Outreach has had missionaries living and working in solidarity with the people on both sides of the border in El Paso and Ciudad Juarez since 1990. As a Society, we are very concerned for the Mexican people who are fleeing violence.

Since the outbreak of drug-related violence in 2006, the Executive Office for Immigration Review reports that while it has received 12,110 applications from Mexican nationals seeking political asylum in the United States, it has granted political asylum to only 232 individuals - less than 2% of all Mexican applicants. By comparison, the United States received less than half as many asylum claims from Colombian nationals during this same time period and granted political asylum to nearly 40% of them. Mexico's war on drugs, the resulting breakdown in social security, and the dramatic escalation of violence since 2006 has claimed the lives of at least 22,700 people and continues to threaten the livelihood of hundreds of thousands more.

In light of this reality, we ask that the Department of Homeland Security:

- Restore integrity and credibility to the political asylum application process to ensure that political asylum applicants fleeing the violence in Mexico receive an unbiased and credible review of their claims of well-founded fear of persecution and that the adjudication of every asylum seeker's case be conducted on an individualized and nondiscriminatory basis in a manner consistent with existing law.
- Ensure that credible fear interviews with qualified asylum officers be conducted in a timely manner for Mexican nationals presenting as asylum seekers at ports of entry. Upon issuance of a determination of credible fear, apply the new ICE Asylum Parole Policy to those detained individuals in a just and fair manner. Mexican nationality must not be taken into consideration as a reason to continue detention and deny parole.
- Grant relief and protection for Mexican nationals deemed not to have met the criteria for political asylum through the use of existing avenues available in law and regulation including but not limited

♦ 1320 Fenwick Ln., Suite 405 ♦ Silver Spring, MD 20910 ♦
301.565.4547 ♦ www.columban.org



COLUMBAN CENTER FOR ADVOCACY AND OUTREACH

to: Temporary Protected Status, withholding of removal, delayed enforced departure, humanitarian paroles, stays of removal, and deferred adjudication.

- Recognize that the United States' and Mexico's decision to place their respective efforts to combat drug trafficking within the context of a war on drugs has had serious violent and destabilizing consequences for many parts of Mexico, especially along border regions, and, as is true in all wars, that the violence and ensuing destabilization continues to create casualties, killed and wounded, human rights abuses, and new waves of refugees who flee and are legitimately in need of protection and assistance.

Pope Benedict XVI has stated, "The emergency that migration has become in our times...calls out to us, and while it solicits our solidarity, it demands, at the same time, effective political answers." We must realize the Catholic Church's demand for human dignity which encompasses the need to provide political asylum for those fleeing violence. In the face of unprecedented violence in Mexico, your action on this matter will demonstrate your commitment towards protecting vulnerable populations and communities and creating a more just world.

Thank you for taking the initiative to ensure that the people of Mexico receive all possible political support and asylum from the United States, consistent with its law.

Sincerely,


Amy Woodam Echeverria

Director, Columban Center for Advocacy and Outreach


MAY-19-2010 04:08P FROM: COLUMBAN CCAO

13015654549

TO: 12023441380

P.1/3

2FO

	COLUMBAN CENTER FOR ADVOCACY AND OUTREACH
	♦ 1320 Fenwick Ln., Suite 405 ♦ Silver Spring, MD, 20910 ♦ ♦ P. 301.565.4547 ♦ F. 301.565.4549 ♦ www.columban.org ♦

FAX

To: <i>Commissioner Alan Bersin</i>	From: <i>Amy Echeverria, CCAO</i>
Fax: <i>202-344-1380</i>	Pages: <i>3 inc. cover page</i>
Phone:	Date: <i>5/19/10</i>
Re:	cc:

Comments:

MAY 20 AM 8:15



**SISTERS OF
St. Francis**

DHS policy letter

Commissioner Alan Bersin
Commission of U.S. Customs and Border Protection
U.S. Department of Homeland Security
Washington, D.C.
May 20, 2010

Dear Commissioner Bersin:

As faith-based and humanitarian organizations concerned for the people in Mexico who are fleeing violence, we respectfully request that you use your discretionary authority to oversee the authorization of petitions for political asylum for Mexican nationals who are fleeing violence.

JUN 1 PM 4:11

Mexico's war on drugs, the resulting breakdown in social security, and the dramatic escalation of violence since its initiation in 2006 has claimed the lives of at least 22,700 people and continues to threaten the livelihood of hundreds of thousands more. With little confidence in the ability of the Mexican government, the Mexican military, or other local or federal law enforcement agencies to provide for their protection, tens of thousands of Mexican nationals have escaped to the United States in search of sanctuary from this violence. El Paso chief of police, Greg Allen, has estimated that during the past two years over 30,000 Mexican nationals fleeing the violence in Ciudad Juárez have settled into El Paso alone.

Since the outbreak of drug-related violence in 2006, the Executive Office for Immigration Review reports that while it has received 12,110 applications from Mexican nationals seeking political asylum in the United States, it has granted political asylum to only 232 individuals - less than 2% of all Mexican applicants. By comparison, the United States received 5,879 asylum claims from Colombian nationals during this same time period and granted political asylum to 2,351 individuals - nearly 40% of all Colombian applicants.

In light of this reality, we ask that the Obama Administration, the Department of Justice, the Department of State, and the Department of Homeland Security:

- Authorize an independent investigation (e.g. the Government Accountability Office) of the political asylum application process vis-à-vis Mexican nationals fleeing the violence in Mexico.
- Ensure that credible fear interviews with qualified asylum officers be conducted in a timely manner for Mexican nationals presenting as asylum seekers at ports of entry, and upon issuance of a determination of credible fear, that the new ICE Asylum Parole Policy be applied to those detained individuals in a just and fair manner. Mexican nationality must not be taken into consideration as a reason to continue detention and deny parole.
- For Mexican nationals deemed not to have met the criteria for political asylum, grant relief and protection through the use of existing avenues available in law and regulation,



including, but not limited to, *Temporary Protected Status*, withholding of removal, delayed enforced departure, humanitarian paroles, stays of removal, and deferred adjudication.

- Restore integrity and credibility to the political asylum application process to ensure that political asylum applicants fleeing the violence in Mexico receive an unbiased and credible review of their claims of well-founded fear of persecution. And ensure that the adjudication of every asylum seeker's case be conducted on an individualized and nondiscriminatory basis in a manner consistent with existing law.
- Recognize that the United States' and Mexico's decision to place their respective efforts to combat drug trafficking within the context of a war on drugs has had serious violent and destabilizing consequences for many parts of Mexico, especially along border regions, and, as is true in all wars, that the violence and ensuing destabilization continues to create casualties, killed and wounded, human rights abuses, and new waves of refugees who flee and are legitimately in need of protection and assistance.

In the face of unprecedented violence in Mexico, your action on this matter will demonstrate your commitment towards protecting vulnerable populations and communities and creating a more just world. Thank you for taking the initiative to ensure that the people of Mexico receive all possible political support and asylum from the United States, consistent with its law.

Sincerely,

[Redacted signature]

(b)(6), (b)(7)(C)

Sisters of St. Francis
200 St. Francis Ave.
Tiffin, Ohio 44883

(b)(5)DP

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**SISTERS OF
St. Francis**

DHS policy letter

Commissioner Alan Bersin
Commission of U.S. Customs and Border Protection
U.S. Department of Homeland Security
Washington, D.C.
May 20, 2010

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- Recognize that the United States' and Mexico's decision to place their respective efforts to combat drug trafficking within the context of a war on drugs has had serious violent and destabilizing consequences for many parts of Mexico, especially along border regions, and, as is true in all wars, that the violence and ensuing destabilization continues to create casualties, killed and wounded, human rights abuses, and new waves of refugees who flee and are legitimately in need of protection and assistance.

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Sincerely,

[Redacted signature]

(b)(6) (b)(7)(C)

Sisters of St. Francis
200 St. Francis Ave.
Tiffin, Ohio 44883



**SISTERS OF
St. Francis**

DHS policy letter

Commissioner Alan Bersin
Commission of U.S. Customs and Border Protection
U.S. Department of Homeland Security
Washington, D.C.
May 20, 2010

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Sincerely,

[Redacted signature]

(b)(6), (b)(7)(C)

Sisters of St. Francis
200 St. Francis Ave.
Tiffin, Ohio 44883

(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C) on behalf of DRO Taskings

Sent: Friday, July 30, 2010 4:48 PM

To: (b) (6), (b) (7)(C)

Cc: (b) (6), (b) (7)(C) DRO Taskings

Subject: FW: OVERDUE IN SP 1300 hrs 10071094 FOLLOW UP New task from HQEXS: WF 876216 Sen Charles E Grassley re large scale effort to parole or defer action on undocumented aliens in US FolderID 47748

Attachments: INC WF 876216 Sen Charles E Grassley re large scale effort to parole or defer action on undocumented aliens in US.PDF; RSP Sen Grassley re parole deferred action S1.doc; Memo Sen Grassley deferred action parole.doc; 11002 1-hd-parole_of_arriving_alien_found_credible_fear.pdf; DROPPM_20_Removal_Process_Relief_From_Removal1.pdf; Appendix 16-2 Significant Public Benefit Parole Protocols and Forms.mht; Significant Public Benefit Parole CBP ICE.DOC

Hi (b) (6), (b) (7)(C)

Here are the memos with the comment on the last paragraph along with the rest of the attachments.

Thank you,

(b) (6), (b) (7)(C)

Taskings and Correspondence Unit
 Department of Homeland Security
 Immigration and Customs Enforcement
 Enforcement and Removal Operations
 500 12th Street SW | Washington, D.C. 20024
 202-732- (b) (6), (b) (7)(C) Office | 202-905- (b) (6), (b) (7)(C) Cellular

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(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C) On Behalf Of DRO Taskings

Sent: Friday, July 30, 2010 4:17 PM

To: (b) (6), (b) (7)(C)

Cc: (b) (6), (b) (7)(C) DRO Taskings

Subject: FW: OVERDUE IN SP 1300 hrs 10071094 FOLLOW UP New task from HQEXS: WF 876216 Sen Charles E Grassley re large scale effort to parole or defer action on undocumented aliens in US FolderID 47748

Hi (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) will be the POC.

Thank you,

(b) (6), (b) (7)(C)

Taskings and Correspondence Unit

Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations
500 12th Street SW | Washington D.C. 20024
202-732- (b)(6) Office | 202-905- (b)(6) Cellular

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From: (b)(6), (b)(7)(C)
Sent: Friday, July 30, 2010 4:15 PM
To: DRO Taskings
Subject: RE: OVERDUE IN SP 1300 hrs 10071094 FOLLOW UP New task from HQEXS: WF 876216 Sen Charles E Grassley re large scale effort to parole or defer action on undocumented aliens in US FolderID 47748

(b)(6), (b)(7)(C) (202) 732- (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)
Taskings and Correspondence Unit
Office of Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
direct: 202.732- (b)(6) cell: 202.359- (b)(6)
(b)(6), (b)(7)(C) dhs.gov (b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C) On Behalf Of DRO Taskings
Sent: Friday, July 30, 2010 3:45 PM
To: (b)(6), (b)(7)(C)
Cc: DRO Taskings
Subject: FW: OVERDUE IN SP 1300 hrs 10071094 FOLLOW UP New task from HQEXS: WF 876216 Sen Charles E Grassley re large scale effort to parole or defer action on undocumented aliens in US FolderID 47748
Importance: High

Hi (b)(6), (b)(7)(C)

Can you please provide a Point of Contact (POC) that may be contacted by DHS regarding this subject matter. This is a higher level POC.

Thank you,

(b)(6), (b)(7)(C)
Taskings and Correspondence Unit
Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations
500 12th Street SW | Washington D.C. 20024
202-732- (b)(6) Office | 202-905- (b)(6) Cellular

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From: (b)(6), (b)(7)(C)
Sent: Friday, July 30, 2010 1:47 PM
To: DRO Taskings
Cc: (b)(6), (b)(7)(C)
Subject: FW: OVERDUE IN SP 1300 hrs 10071094 FOLLOW UP New task from HQEXS: WF 876216 Sen Charles E Grassley re large scale effort to parole or defer action on undocumented aliens in US FolderID 47748
Importance: High

Where is the memo from the Senator and who is the POC?

Mr. (b)(6), (b)(7)(C)
 Deputy Chief of Staff (A)
 Office of the Executive Associate Director
 Enforcement & Removal Operations
 Work (202) 732- (b)(6)
 Fax (202) 732-3116 (b)(6)

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From: (b)(6), (b)(7)(C) **On Behalf Of** DRO Taskings
Sent: Friday, July 30, 2010 1:22 PM
To: (b)(6), (b)(7)(C)
Cc: DRO Taskings
Subject: OVERDUE IN SP 1300 hrs 10071094 FOLLOW UP New task from HQEXS: WF 876216 Sen Charles E Grassley re large scale effort to parole or defer action on undocumented aliens in US FolderID 47748
Importance: High

The below and the attached is ready for review.

Request

Please utilize track changes in the memo titled Memo Sen Grassley deferred action parole and provide a Point of Contact (POC) that may be contacted by DHS regarding this subject matter. This is a higher level POC.

Please review the document titled *RSP Sen Grassley re parole deferred action S1.doc*. Please address the comments in the last paragraph.

Response

Please see the below and attached

- (1) Significant Public Benefit Parole Protocol for U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement for Law Enforcement Purposes
- (2) Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (ICE Policy Number 11002.1)
- (3) Chapter 20: Removal Process: Relief From Removal (from the Enforcement and Removal Operations Policy and Procedure Manual)

The processes for ERO to recommend/approve deferred action and parole are quite detailed and are included in the documents that we are providing. As we understand, the granting of deferred action and parole are also decisions made by USCIS. Because USCIS is one of the three entities asked to provide its guidelines and procedures in this area, we defer to USCIS to help describe the process from initial request to final approval. We discovered and edited language from the USCIS website and have included it below for possible consideration:

Deferred action is an exercise of prosecutorial discretion not to pursue removal from the United States of a particular foreigner for a specific period. Deferred action is a temporary discretionary solution. The grant of deferred action by USCIS does not confer or alter any immigration status. It does not affect any period of prior unlawful presence. The grant of deferred action does not convey or imply any waivers of inadmissibility that may exist, regardless of whether or not that inadmissibility is known to DHS at the time of the request for deferred action. Likewise, deferred action cannot be used to establish eligibility for any immigration benefit that requires maintenance of lawful status. Periods of time in deferred action do, however, qualify as periods of stay authorized by the Secretary for purposes of the Immigration and Nationality Act.

Deferred action is an act of administrative convenience to the government which gives some cases lower priority. The vast majority of cases in which deferred action is granted involve medical grounds. USCIS can also grant deferred action relief when an individual has suffered substantial physical or mental abuse as a result of having been a victim of a crime or similar activity involving rape, torture, trafficking, incest, and/or domestic violence. All approved self-petitioners not in proceedings are eligible for deferred action and work authorization, including abused spouses and children of lawful permanent residents. Deferred action can also be used for extenuating circumstances. For example, USCIS provided deferred action to foreign academic students impacted by Hurricane Katrina. For these foreign students, USCIS made clear the general purpose, criteria, and limitations for deferred action relief, as well as where individuals were to file.

Although operations instructions for deferred action were withdrawn June 24, 1997, the relief continues to be available. Individual deferred action requests are recommended by District Directors to Regional Directors for approval. The following are factors for the District Director to consider: (1) the likelihood of ultimately removing the alien; (2) the presence of sympathetic factors; (3) the likelihood that because of sympathetic factors a large amount of adverse publicity will be generated; and (4) whether the individual is a member of a class of deportable aliens whose removal has been given high enforcement priority.

Parole is used sparingly to bring someone who is otherwise inadmissible into the United States for a temporary period of time due to a compelling emergency. USCIS may grant parole temporarily: (1) to anyone applying for admission into the United States based on urgent humanitarian reasons or if there is a significant public benefit, or (2) for a period of time that corresponds with the length of the emergency or humanitarian situation.

Parolees must depart the United States before the expiration of their parole. Anyone can file an application for humanitarian parole, but they cannot use parole to avoid normal visa-issuing procedures or to bypass immigration procedures. The process includes: (1) completing a Form I-131, Application for Travel Document, and including the filing fee; (2) completing a Form I-134, Affidavit of Support, to demonstrate that the applicant will not become a public charge; and (3) including a detailed explanation and evidence of an applicant's circumstances. Applicants who are represented by an attorney must have the attorney file a Form G-28, Notice of Entry of Appearance as Attorney or Representative.

Thank you,

(b)(7)(C)
Taskings & Correspondence Unit
Enforcement and Removal Operations
Immigration and Customs Enforcement
U.S. Department of Homeland Security

500 12th Street SW| Washington, DC 20536 | 202-732- (b)(7)(C)

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7/30/2010

2010FOIA6052.001171

From: (b)(7)(C)
Sent: Friday, July 30, 2010 11:56 AM
To: DRO Taskings
Cc: (b)(7)(C)
Subject: FW: 10071094 FOLLOW UP New task from HQEXS: WF 876216 Sen Charles E Grassley re large scale effort to parole or defer action on undocumented aliens in US FolderID 47748
Importance: High

IPC response; cleared by (A) AD IPC Bronick:

Following are the titles of the documents that ERO is providing. One has changed from our original submission, so please use these. (We have included both the web version and a copied Word version of the first document listed below.)

- (1) Significant Public Benefit Parole Protocol for U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement for Law Enforcement Purposes
- (2) Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (ICE Policy Number 11002.1)
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applying for admission into the United States based on urgent humanitarian reasons or if there is a significant public benefit, or (2) for a period of time that corresponds with the length of the emergency or humanitarian situation.

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From: (b)(6), (b)(7)(C) **On Behalf Of** DRO Taskings

Sent: Thursday, July 29, 2010 5:05 PM

To: (b)(6), (b)(7)(C)

Cc: DRO Taskings

Subject: 10071094 FOLLOW UP New task from HQEXS: WF 876216 Sen Charles E Grassley re large scale effort to parole or defer action on undocumented aliens in US FolderID 47748

Importance: High

Assigned Unit (s):

Detention & Removal Management

From (Requesting Office):

Task Due Date:

Instructions:

Information Policy & Communications (LEAD) / AD

Office of the Executive Secretariat

NLT Friday, July 30, 2010 at 1000 hrs

Please utilize track changes in the memo titled Memeo Sen Grassley deferred action parole and provide a Point of Contact (POC) that may be contacted by DHS regarding this subject matter. This is a higher level POC.

Please review the document titled *RSP Sen Grassley re parole deferred action SI.doc*. Please address the comments in the last paragraph.

Background

N/A

Tasking POC

(b)(6), (b)(7)(C) OES

Thank you,

(b)(6), (b)(7)(C)
Taskings & Correspondence Unit
Enforcement and Removal Operations
Immigration and Customs Enforcement
U.S. Department of Homeland Security

500 12th Street SW| Washington, DC 20536 | 202-732- (b)(7)(C)

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2010FOIA6052.001173

7/30/2010

~~not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this report should be furnished to the media, either in written or verbal form.~~

From: oesims@sp.ice.dhs.gov [mailto:oesims@sp.ice.dhs.gov]

Sent: Thursday, July 29, 2010 4:29 PM

To: DRO Taskings

Subject: 10074081 New task from HQEXS: WF 876216 Sen Charles E Grassley re large scale effort to parole or defer action on undocumented aliens in US FolderID 47748

Importance: High

Please do not reply to this e-mail. It is from an unmonitored system account. All action should occur within OESIMS.

TO: ERO Taskings

FROM: [REDACTED] OES

RE: S1 tasking for clearance

Due: 7/30 1pm*

*There will be no extensions since ERO was late getting input. This is an S1 request, and needs to move forward in the clearance process.

In the memo (Doc ID 2238000) Please provide a POC that may be contacted by DHS regarding this subject matter. This is a higher level POC.

In the draft response (Doc ID 2237959) please concur on the current draft, also please see comment in last paragraph requesting input on describing the process from initial request to the final approval.

Thanks,

Original Message:

This message is part of an automated workflow, please do not change the text in the subject line when responding or forwarding the message.

Folder Subject: WF 876216 Sen Charles E Grassley re large scale effort to parole or defer action on undocumented aliens in US

Folder Originator: Charles E Grassley

Workflow ID: 2451fec8-84e7-4302-b23f-d73b05753218

Folder Location: [REDACTED]

Task ID: 245331

Workflow Task ID: 43bb47fa-8933-4da6-9403-78630ae670dd

Assignment ID: c68ee02c-5a21-4ddf-b019-280b72391a55

7/30/2010

2010FOIA6052.001174

United States Senate

WASHINGTON, DC 20510

RECEIVED BY DHS EXEC SEC

2010 JUL 26 PM 5: 04

July 26, 2010

The Honorable Janet Napolitano
Secretary
Department of Homeland Security
Nebraska Avenue Complex
245 Murray Lane, Mailstop 0150
Washington, DC 20528-0150

Dear Secretary Napolitano:

We remained concerned about potential plans for a large-scale effort to offer parole or to defer action on undocumented aliens in the United States. We realize that deferred action and parole are discretionary actions reserved for individual cases that present unusual, emergent or humanitarian circumstances. However, we do not believe that such actions should be used for a large population of illegal aliens or used to bypass Congress and the legislative process.

News articles report that your department has denied the charge, stating that grants of parole or deferred removal are based on the merits of individual cases. While we have not personally been assured that plans have not been drawn up, we are interested in data that will guarantee the American people that the Administration is not using these discretionary actions in cases that are not urgent or based on humanitarian reasons.

Therefore, we seek the following information about how the department is using its authorities. Specifically, we would like answers to the following questions no later than August 16:

- How many removal actions have been deferred each year over the past 5 years, including calendar year 2010, to date?
- How many times has parole been granted each year over the past 5 years, including calendar year 2010, to date?
- Of those granted deferred action or parole in the past five years, including 2010, how many have been provided work authorizations? In what circumstances are work authorizations not granted?
- What guidelines and procedures are in place when the department considers using its discretionary power to defer action or grant parole? Please describe the process from the initial request to the final approval, and please provide a copy of the written policies that employees of Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, and Customs and Border Protection must follow.

Letter to Secretary Napolitano, July 26, 2010

Finally, in order to ensure that deferred action and parole are being used in a manner consistent with the law, we request to be notified in writing when the Administration defers removal action or grants parole to undocumented, deportable or inadmissible aliens. We would further request a summary of the case and the rationale for using the discretionary action. In that vein, we would like a summary (including demographic background) of the cases that so far have been approved in calendar year 2010.

We appreciate your attention to this matter and look forward to hearing from you.

Sincerely,

Chuck Grassley	Tom Coburn
Paul Coleman	Dan Vitter
Johnny Isakson	Kevin G. Hatch
Jim DeMint	Jim Bunning
Sayby Chaulk	Pat Roberts
Jim Cooper	Jeff Sessions

The Honorable Charles Grassley
United States Senate
Washington, DC 20510

Dear Senator Grassley:

(b)(5)DP

Yours very truly,

Janet Napolitano

Enclosure

(b)(5)DP

Office of the Director

U.S. Department of Homeland Security
500 12th Street SW
Washington, D.C. 20536



**U.S. Immigration
and Customs
Enforcement**

(b)(5)DP

(b)(5)DP

www.ice.gov

(b)(5)DP

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture

DISTRIBUTION:	ICE
DIRECTIVE NO.:	11002.1
ISSUE DATE:	December 8, 2009
EFFECTIVE DATE:	January 4, 2010
SUPERSEDES:	See section 3.
FEA NUMBER:	601-05

1. **PURPOSE.** The purpose of this ICE policy directive is to ensure transparent, consistent, and considered ICE parole determinations for arriving aliens seeking asylum in the United States. This directive provides guidance to Detention and Removal Operations (DRO) Field Office personnel for exercising their discretion to consider the parole of arriving aliens processed under the expedited removal provisions of section 235 of the Immigration and Nationality Act (INA) who have been found to have a "credible fear" of persecution or torture by U.S. Citizenship and Immigration Services (USCIS) or an immigration judge of the Executive Office for Immigration Review. This directive establishes a quality assurance process that includes record-keeping requirements to ensure accountability and compliance with the procedures set forth herein.
 - 1.1. This directive does not apply to aliens in DRO custody under INA § 236. This directive applies only to arriving aliens who have been found by USCIS or an immigration judge to have a credible fear of persecution or torture.
2. **AUTHORITIES/REFERENCES.**
 - 2.1. INA §§ 208, 212(d)(5), 235(b), and 241(b)(3); 8 U.S.C. §§ 1158, 1182(d)(5), 1225(b), and 1231(b)(3); 8 C.F.R. §§ 1.1(q), 208.30(e)-(f), 212.5 and 235.3.
 - 2.2. Department of Homeland Security Delegation Number 7030.2, "Delegation of Authority to the Assistant Secretary for the Bureau of Immigration and Customs Enforcement" (Nov. 13, 2004).
 - 2.3. ICE Delegations of Authority to the Directors, Detention and Removal and Investigations and to Field Office Directors, Special Agents in Charge and Certain Other Officers of the Bureau of Immigration and Customs Enforcement, No. 0001 (June 6, 2003).
3. **SUPERSEDED POLICIES AND GUIDANCE.** The following ICE directive is hereby superseded:
 - 3.1. ICE Policy Directive No. 7-1.0, "Parole of Arriving Aliens Found to Have a 'Credible Fear' of Persecution or Torture" (Nov. 6, 2007).

4. **BACKGROUND.**

- 4.1. Arriving aliens processed under the expedited removal provisions of INA §235(b) may pursue asylum and related forms of protection from removal if they successfully demonstrate to USCIS or an immigration judge a credible fear of persecution or torture.
- 4.2. Arriving aliens who establish a credible fear of persecution or torture are to be detained for further consideration of the application for asylum. INA § 235(b)(1)(B)(ii). Such aliens, however, may be paroled on a case-by-case basis for "urgent humanitarian reasons" or "significant public benefit," provided the aliens present neither a security risk nor a risk of absconding. 8 C.F.R. § 212.5(b); *see also* 8 C.F.R. § 235.3(c) (providing that aliens referred for INA § 240 removal proceedings, including those who have a credible fear of persecution or torture, may be paroled under § 212.5(b) standards).
- 4.3. The applicable regulations describe five categories of aliens who may meet the parole standards based on a case-by-case determination, provided they do not present a flight risk or security risk: (1) aliens who have serious medical conditions, where continued detention would not be appropriate; (2) women who have been medically certified as pregnant; (3) certain juveniles; (4) aliens who will be witnesses in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States; and (5) aliens whose continued detention is not in the public interest. *See* 8 C.F.R. § 212.5(b). *But compare* 8 C.F.R. § 235.3(b)(4)(ii) (stating that arriving aliens who have not been determined to have a credible fear will not be paroled unless parole is necessary in light of a "medical emergency or is necessary for a legitimate law enforcement objective").
- 4.4. While the first four of these categories are largely self-explanatory, the term "public interest" is open to considerable interpretation. This directive explains how the term is to be interpreted by DRO when it decides whether to parole arriving aliens determined to have a credible fear. The directive also mandates uniform record-keeping and review requirements for such decisions. Parole remains an inherently discretionary determination entrusted to the agency; this directive serves to guide the exercise of that discretion.

5. **DEFINITIONS:**

- 5.1. **Arriving Alien.** For purposes of this directive, "arriving alien" has the same definition as provided for in 8 C.F.R. § 1.1(q) and 1001.1(q).
- 5.2. **Credible Fear.** For purposes of this directive, with respect to an alien processed under the INA § 235(b) "expedited removal" provisions, "credible fear" means a finding by USCIS or an immigration judge that, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts

as are known to the interviewing USCIS officer or immigration judge, there is a significant possibility that alien could establish eligibility for asylum under INA § 208, withholding of removal under INA § 241(b)(3), or protection from removal under the Convention Against Torture.

- 5.3. **Parole.** For purposes of this directive, "parole" is an administrative measure used by ICE to temporarily authorize the release from immigration detention of an inadmissible arriving alien found to have a credible fear of persecution or torture, without lawfully admitting the alien. Parole does not constitute a lawful admission or a determination of admissibility, *see* INA §§ 212(d)(5)(A), 101(a)(13)(B), and reasonable conditions may be imposed on the parole, *see* 8 C.F.R. § 212.5(d). By statute, parole may be used, in the discretion of ICE and under such conditions as ICE may prescribe, only for urgent humanitarian reasons or for significant public benefit. As interpreted by regulation, "urgent humanitarian reasons" and "significant public benefit" include the five categories set forth in 8 C.F.R. § 212.5(b) and listed in paragraph 4.3 of this directive, including the general category of "aliens whose continued detention is not in the public interest."

6. **POLICY.**

- 6.1. As soon as practicable following a credible fear determination by USCIS for an arriving alien detained by DRO, DRO shall provide the alien with the attached *Parole Advisal and Scheduling Notification*. This form informs the alien that he or she will be interviewed for potential parole from DRO custody and notifies the alien of the date of the scheduled interview and the deadline for submitting any documentary material supporting his or her eligibility for parole. The contents of the notification shall be explained to such aliens in a language they understand. In determining whether detained arriving aliens found to have a credible fear should be paroled from custody, DRO shall proceed in accordance with the terms of this directive.
- 6.2. Each alien's eligibility for parole should be considered and analyzed on its own merits and based on the facts of the individual alien's case. However, when an arriving alien found to have a credible fear establishes to the satisfaction of DRO his or her identity and that he or she presents neither a flight risk nor danger to the community, DRO should, absent additional factors (as described in paragraph 8.3 of this directive), parole the alien on the basis that his or her continued detention is not in the public interest. DRO Field Offices shall uniformly document their parole decision-making processes using the attached *Record of Determination/Parole Determination Worksheet*.
- 6.3. Consistent with the terms of this directive, DRO shall maintain national and local statistics on parole determinations and have a quality assurance process in place to monitor parole decision-making, as provided for in sections 7 and 8 of this directive.

- 6.4. In conducting parole determinations for arriving aliens in custody after they are found to have a credible fear of persecution or torture, DRO shall follow the procedures set forth in section 8 of this directive.
- 6.5. DRO shall provide every alien subject to this directive with written notification of the parole decision, including a brief explanation of the reasons for any decision to deny parole. When DRO denies parole under this directive, it should also advise the alien that he or she may request redetermination of this decision based upon changed circumstances or additional evidence relevant to the alien's identity, security risk, or risk of absconding. DRO shall ensure reasonable access to translation or interpreter services if notification is provided to the alien in a language other than his or her native language and the alien cannot communicate effectively in that language.
- 6.6. Written notifications of parole decisions shall be provided to aliens subject to this directive and, if represented, their representative within seven days of the date an alien is initially interviewed for parole or the date the alien requests a parole redetermination, absent reasonable justification for delay in providing such notification.
- 6.7. A decision to grant or deny parole shall be prepared by a DRO officer assigned such duties within his or her respective DRO Field Office. The decision shall pass through at least one level of supervisory review, and concurrence must be finally approved by the Field Office Director (FOD), Deputy FOD (DFOD), or Assistant FOD (AFOD), where authorized by the FOD.

7. RESPONSIBILITIES.

- 7.1. The **DRO Director** is responsible for the overall management of the parole decision-making process for arriving aliens in DRO custody following determinations that they have a credible fear of persecution or torture.
- 7.2. The **DRO Assistant Director for Operations** is responsible for:
 - 1) Ensuring considered, consistent DRO parole decision-making and recordkeeping nationwide in cases of arriving aliens found to have a credible fear;
 - 2) Overseeing monthly tracking of parole statistics by all DRO Field Offices for such cases; and
 - 3) Overseeing an effective national quality assurance program that monitors the Field Offices to ensure compliance with this directive.
- 7.3. **DRO Field Office Directors** are responsible for:
 - 1) Implementing this policy and quality assurance processes;

- 2) Maintaining a log of parole adjudications for credible fear cases within their respective geographic areas of responsibility, including copies of the *Record of Determination/Parole Determination Worksheet*;
 - 3) Providing monthly statistical reports on parole decisions for arriving aliens found to have a credible fear;
 - 4) Making the final decision to grant or deny parole for arriving aliens found to have a credible fear within their respective areas of responsibility or, alternatively, delegating such responsibility to their DFODs or AFODs (in which case, FODs nevertheless retain overall responsibility for their office's compliance with this directive regardless of delegating signatory responsibility to DFODs or AFODs); and
 - 5) Ensuring that DRO field personnel within their respective areas of responsibility who will be assigned to make parole determinations are familiar with this directive and corresponding legal authorities.
- 7.4. **DRO Deputy Field Office Directors** are responsible for reviewing, and forwarding for their respective FODs' approval, parole decisions prepared by their subordinates in the cases of arriving aliens found to have a credible fear of persecution or torture. Alternatively, DFODs delegated responsibility under paragraph 7.3 of this directive are responsible for discharging final decision-making authority over parole determinations in such cases within their respective areas of responsibility.
- 7.5. **Assistant Field Office Directors** are responsible for reviewing, and forwarding for their respective DFODs' or FODs' approval, parole decisions prepared by their subordinates in the cases of arriving aliens found to have a credible fear of persecution or torture. Alternatively, AFODs delegated responsibility under paragraph 7.3 of this directive are responsible for discharging final decision-making authority over parole determinations in such cases within their respective areas of responsibility.
- 7.6. As applicable, **DRO field personnel** so assigned by their local chains-of-command are responsible for providing detained arriving aliens found to have a credible fear with the attached *Parole Advisal and Scheduling Notification* and for fully and accurately completing the attached *Record of Determination/Parole Determination Worksheet* in accordance with this directive and corresponding legal authorities.
8. **PROCEDURES.**
- 8.1. As soon as practicable following a finding that an arriving alien has a credible fear, the DRO Field Office with custody of the alien shall provide the attached *Parole Advisal and Scheduling Notification* to the alien and explain the contents of the notification to the alien in a language he or she understands, through an interpreter if

necessary. The Field Office will complete the relevant portions of the notification, indicating the time when the alien will receive an initial interview on his or her eligibility for parole and the date by which any documentary evidence the alien wishes considered should be provided, as well as instructions for how any such information should be provided.

- 8.2 Unless an additional reasonable period of time is necessary (e.g., due to operational exigencies or an alien's illness or request for additional time to obtain documentation), no later than seven days following a finding that an arriving alien has a credible fear, a DRO officer familiar with the requirements of this directive and corresponding legal authorities must conduct an interview with the alien to assess his or her eligibility for parole. Within that same period, the officer must complete the *Record of Determination/Parole Determination Worksheet* and submit it for supervisory review. If the officer concludes that parole should be denied, the officer should draft a letter to this effect for the FOD's, DFOD's, or AFOD's signature to be provided to the alien or the alien's representative and forward this letter for supervisory review along with the completed *Record of Determination/Parole Determination Worksheet*. The letter must include a brief explanation of the reasons for denying parole and notify the alien that he or she may request redetermination of parole based upon changed circumstances or additional evidence relevant to the alien's identity, security risk, or risk of absconding.
- 8.3. An alien should be paroled under this directive if DRO determines, in accordance with paragraphs (1) through (4) below, that the alien's identity is sufficiently established, the alien poses neither a flight risk nor a danger to the community, and no additional factors weigh against release of the alien.

1) Identity.

- a) Although many individuals who arrive in the United States fleeing persecution or torture may understandably lack valid identity documentation, asylum-related fraud is of genuine concern to ICE, and DRO must be satisfied that an alien is who he or she claims to be before releasing the alien from custody.
- b) When considering parole requests by an arriving alien found to have a credible fear, Field Office personnel must review all relevant documentation offered by the alien, as well as any other information available about the alien, to determine whether the alien can reasonably establish his or her identity.
- c) If an alien lacks valid government-issued documents that support his or her assertion of identity, Field Office personnel should ask whether the alien can obtain government-issued documentation of identity.

- d) If the alien cannot reasonably provide valid government-issued evidence of identity (including because the alien reasonably does not wish to alert that government to his or her whereabouts), the alien can provide for consideration sworn affidavits from third parties. However, third-party affiants must include copies of valid, government issued photo-identification documents and fully establish their own identities and addresses.
- e) If government-issued documentation of identity or third-party affidavits from reliable affiants are either not available or insufficient to establish the alien's identity on their own, Field Office personnel should explore whether the alien is otherwise able to establish his or her identity through credible statements such that there are no substantial reasons to doubt the alien's identity.

2) Flight Risk.

- a) In order to be considered for release, an alien determined to have a credible fear of persecution or torture must present sufficient evidence demonstrating his or her likelihood of appearing when required.
- b) Factors appropriate for consideration in determining whether an alien has made the required showing include, but are not limited to, community and family ties, employment history, manner of entry and length of residence in the United States, stability of residence in the United States, record of appearance for prior court hearings and compliance with past reporting requirements, prior immigration and criminal history, ability to post bond, property ownership, and possible relief or protection from removal available to the alien.
- c) Field Office personnel shall consider whether setting a reasonable bond and/or entering the alien in an alternative-to-detention program would provide reasonable assurances that the alien will appear at all hearings and depart from the United States when required to do so.
- d) Officers should exercise their discretion to determine what reasonable assurances, individually or in combination, are warranted on a case-by-case basis to mitigate flight risk. In any event, the alien must be able to provide an address where he or she will be residing and must timely advise DRO of any change of address.

3) Danger to the Community.

- a) In order for an alien to be considered for parole, Field Office personnel must make a determination whether an alien found to have a credible fear poses a danger to the community or to U.S. national security.
- b) Information germane to the determination includes, but is not limited to, evidence of past criminal activity in the United States or abroad, of activity contrary to U.S. national security interests, of other activity giving rise to concerns of public safety or danger to the community (including due to serious mental illness), disciplinary infractions or incident reports, and any criminal or detention history that shows that the alien has harmed or would likely harm himself or herself or others.
- c) Any evidence of rehabilitation also should be weighed.

4) Additional Factors.

- a) Because parole remains an inherently discretionary decision, in some cases there may be exceptional, overriding factors that should be considered in addition to the three factors discussed above. Such factors may include, but are not limited to, serious adverse foreign policy consequences that may result if the alien is released or overriding law enforcement interests.
- b) Field Office personnel may consider such additional factors during the parole decision-making process.

- 8.4. Assigned DRO officers should, where appropriate, request that parole applicants provide any supplementary information that would aid the officers in reaching a decision. The *Record of Determination/Parole Determination Worksheet* should be annotated to document the request for supplementary information and any response from the detainee.
- 8.5. After preparing and signing the *Record of Determination/Parole Determination Worksheet*, and in the case of a denial of parole, drafting a written response to the alien, the assigned DRO officer shall forward these materials and the parole request documentation to his or her first-line supervisor for review and concurrence.
- 8.6. Upon his or her concurrence, the first-line supervisor shall sign the *Record of Determination/Parole Determination Worksheet* where indicated and forward it, along with any related documentation, to the FOD (or, where applicable, the DFOD or AFOD) for final approval.
- 8.7. The FOD (or, where applicable, the DFOD or AFOD) shall review the parole documentation, consult with the preparing officer and supervisor as necessary, and

either grant or deny parole by signing the *Record of Determination/Parole Determination Worksheet* where indicated and, in the case of a denial, signing the written response to the alien.

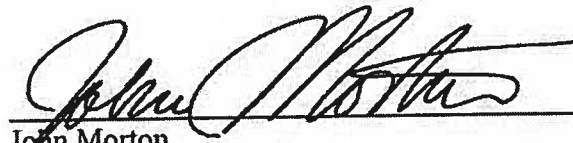
- 8.8. Following a final decision by the FOD to deny parole (or, where applicable, the DFOD or AFOD), the Field Office shall provide the written response to the alien or, if represented, to the alien's legal representative, indicating that parole was denied. If parole is granted, the Field Office shall provide the alien with a date-stamped I-94 Form bearing the following notation: "Paroled under 8 C.F.R. § 212.5(b). Employment authorization not to be provided on this basis."
- 8.9. If an alien makes a written request for redetermination of an earlier decision denying parole, the Field Office may, in its discretion, reinterview the alien or consider the request based solely on documentary material already provided or otherwise of record.
- 8.10. The supporting documents and a copy of the parole decision sent to the alien (if applicable), the completed *Record of Determination/Parole Determination Worksheet*, and any other documents related to the parole adjudication should be placed in the alien's A-file in a record of proceeding format. In addition, a copy of the *Record of Determination/Parole Determination Worksheet* shall be stored and maintained under the authority of the FOD for use in preparing monthly reports.
- 8.11. On a monthly basis, FODs shall submit reports to the Assistant Director for Operations, or his or her designee, detailing the number of parole adjudications conducted under this directive within their respective areas of responsibility, the results of those adjudications, and the underlying basis of each Field Office decision whether to grant or deny parole. The Assistant Director for Operations, or his or her designee, in conjunction with appropriate DRO Headquarters components, will analyze this reporting and collect individual case information to review in more detail, as warranted. In particular, this analysis will rely on random sampling of all reported cases for in-depth review and will include particular emphasis on cases where parole was not granted because of the presence of additional factors, per paragraph 8.3(4) of this directive. Any significant or recurring deficiencies identified during this monthly analysis should be explained to the affected Field Office, which will take appropriate corrective action.
- 8.12. At least once every six months, the Assistant Director for Operations, or his or her designee, shall prepare a thorough and objective quality assurance report, examining the rate at which paroled aliens abscond and the Field Offices' parole decision-making, including any noteworthy trends or corrective measures undertaken based upon the monthly quality assurance analysis required by paragraph 8.11 of this directive.

9. **ATTACHMENTS.**

- *Parole Advisal and Scheduling Notification.*
- *Record of Determination/Parole Determination Worksheet.*

10. **NO PRIVATE RIGHTS CREATED.** This directive is an internal policy statement of ICE. It is not intended to, shall not be construed to, may not be relied upon 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:



John Morton

Assistant Secretary

U.S. Immigration and Customs Enforcement

**SIGNIFICANT PUBLIC BENEFIT PAROLE
PROTOCOL FOR U.S. CUSTOMS AND BORDER PROTECTION AND
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
FOR LAW ENFORCEMENT PURPOSES**

I. Purpose

This protocol establishes the policy for requesting, vetting, approving, supervising, and tracking significant public benefit paroles (SPBP) for the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE).

SPBP is a critical enforcement tool that enhances the ability of CBP and ICE to enforce the law and protect the American people. It is a temporary measure used to support law enforcement efforts by providing a legal mechanism for aliens such as informants, witnesses, criminals, and defendants who are otherwise inadmissible to be present in the United States so they may assist with investigations, prosecutions, or other activities necessary to secure the borders of the United States.

Types of SPBP covered by the protocol include, but are not necessarily limited to:

1. Parole of an alien into the United States as a confidential informant to obtain information pertinent to border enforcement operations or to assist in an investigation.
2. Parole of an alien into the United States as a material witness in the prosecution of an alien smuggler, a drug smuggler, or other criminal violator.
3. Parole of a defendant or a criminal alien into the United States for the purpose of prosecution.

II. Scope

- A. This protocol applies only to the DHS organizational elements of CBP and ICE.
- B. The approval of SPBP for law enforcement agencies other than CBP and ICE is covered in a separate protocol entitled "Significant Public Benefit Parole for U.S. Law Enforcement Agencies."

III. Authorities

This protocol is governed by numerous Public Laws and national policy, such as:

- A. Section 212(d)(5) of the Immigration and Nationality Act, Title 8, United States Code, Section 1182(d)(5). This authorizes the Attorney General to parole aliens into the United States.
- B. Sections 402 and 421 of the Homeland Security Act of 2002, Public Law 107-29: This transfers authority for immigration matters, including parole, to the Secretary of Homeland Security and the Under Secretary, BTS.

C. DHS Delegation Order Number 7010.1: This delegates authority for parole to the Commissioner, CBP.

D. DHS Delegation Order Number 7030: This delegates authority for parole to the Assistant Secretary, ICE.

E. Title 8, Code of Federal Regulations (CFR), Section 212.5: This provides regulations for the parole of aliens and delegated authority for parole to, among others, the Assistant Commissioner, Office of Field Operations (OFO); Directors of Field Operations (DFO); Port Directors; Special Agents in Charge (SAC); Deputy Special Agents in Charge; Associate Special Agents in Charge; Assistant Special Agents in Charge; Resident Agents in Charge; and Chief Patrol Agents (CPA).

emoranda of May 22, 2003 and July 20, 2004, from the CBP Assistant Commissioner, OFO: This delegates authority for paroles to the officials in OFO designated in Authority III.E. above and to certain other port of entry managers.

G. ICE Delegation Number 0001: This delegates authority to adjudicate requests for parole and to parole applicants for admission into the United States to the officials in the Office of Investigations (ICE/OI) designated in Authority III.E above.

IV. Definitions

A. "Parole": A temporary measure used to allow an alien to be present in the United States who is otherwise inadmissible. Parole does not constitute a formal admission to the United States and confers only temporary authorization to be present in the United States without having been admitted.

B. "Significant Public Benefit": A reasonable expectation on behalf of the authorizing official that the alien's presence in the United States will facilitate, or is consistent with:

1. National security.
2. Development of intelligence or information pertinent to the DHS mission.
3. Law enforcement or border enforcement operations or proceedings.
4. Cooperation in an investigation.
5. Advantage or benefit to the United States.

C. "Parole in Place": The granting of parole to an applicant for admission (material witness, informant, etc.) who is already in the United States and has not been previously inspected and admitted.

D. "Deferred Action": A discretionary measure to defer the removal of an alien from the United States. Deferred action does not confer any legal immigration status upon an alien, and removal proceedings may be initiated at any time. (See I-LINK (INSERTS), *Detention and Deportation Officer's Field Manual*, Chapter 20.8, "Deferred Action.")

E. "Controlled Delivery": An investigative technique involving the transportation of merchandise, including contraband, to suspected violators while it is under the direction or surveillance of law enforcement officers. Controlled deliveries often involve witting informants, cooperating defendants, or undercover agents.

F. "Cold Convoy": A controlled delivery, usually initiated at a port of entry (POE), in which the violator is unaware that merchandise has been discovered, is not cooperating with agents, and is allowed to proceed to his or her destination while under the surveillance of agents.

G. "Pass-Through": A controlled delivery in which a controlled importation or exportation of merchandise occurs at the direction of the Government for investigative purposes.

H. "Re-Parole (Extension)": An authorized continuation of the initial parole.

I. "Silent Parole": An investigative technique involving the entry of an alien into the United States in a parole status without the issuance of customary parole documentation to the alien at the time of arrival in furtherance of a law enforcement operation. The alien may be witting or unwitting regarding the silent parole. At the conclusion of the law enforcement operation, the alien should be further processed at the nearest POE, Border Patrol station, or ICE office.

V. Responsibilities

A. CBP and ICE Field Offices

1. Authorizing officials designated in Authority III.E and F have the authority to grant, terminate, or deny a parole directly supporting law enforcement objectives.

2. The authorizing official or designee will submit all appropriate forms and documentation to the POE and the ICE Parole and Humanitarian Assistance Branch (PHAB) in accordance with this protocol.

3. The authorizing official or designee will conduct the required record checks during the parole approval process in accordance with this protocol.

4. SACs, CPAs, and DFOs will assign responsibility for administering the SPBP program to a Parole Coordinator. The Parole Coordinator will ensure compliance with this protocol by maintaining files, communicating with officials within the chain of command, communicating with the PHAB, monitoring deadlines, and performing other duties as necessary.

5. Authorizing field offices will be responsible for coordinating the arrival of the parolee, supervising the parolee while present in the United States, and ensuring the parolee's timely departure from the United States in accordance with this protocol.

6. Foreign offices will request SPBP from the corresponding domestic field office with responsibility for the area in which the parolee will reside while in the United States. All such requests will be coordinated with the PHAB and approved or denied in accordance with this protocol. The authorizing domestic field office will be responsible for supervising and tracking the parolee while the parolee is in the United States.

B. Parole and Humanitarian Assistance Branch

1. The PHAB will provide programmatic support to the SPBP program for both CBP and ICE.
2. The PHAB will maintain the database in which all SPBPs will be entered and tracked. The PHAB will enter, update, and maintain the subject records in the SPBP database until a national field accessible SPBP case-tracking system is developed jointly by the PHAB, the Headquarters Office of Border Patrol (HQOBP), OFO, and ICE/OI.
3. For vetting and deconfliction purposes, the PHAB will circulate for concurrence names of parolees to the principal law enforcement agencies (LEAs) identified in Procedure VI.B.7.a ("Circulation and Concurrence").
4. The PHAB will serve as the designated entity to contact overseas offices, embassies, and consulates for the purpose of arranging the issuance of travel documents for parolees.

VI. Policy and Procedures

A. Policy

1. Approval Authority

- a. Pursuant to the authorities and delegations listed above, the Commissioner, CBP, and the Assistant Secretary, ICE, may grant, terminate, or deny a parole at any time within their respective organizations.
 - b. The HQOBP, OFO, and ICE/OI Headquarters components have the authority to terminate or deny a parole at any time within their respective chains of command.
 - c. Authorizing officials designated in Authority III.E and F in CBP and ICE field offices may grant, terminate, or deny paroles directly supporting operations in their offices.
 - d. The authority levels designated in 8 CFR 212.5 (Authority III.E) are at the discretion of the CBP Assistant Commissioner/OFO; the Chief, HQOBP; and the ICE Director/OI for their respective offices. These officials may issue additional internal policies to restrict approval authority for some or all aliens.
2. Parole in Place : Authorizing officials may approve the parole of an applicant for admission already inside the United States without requiring the alien to first depart the United States. Since the alien is already in the United States, the authorizing official does not have to coordinate the alien's arrival with the POE (all other procedures must be adhered to). Parole in Place applies only to aliens who are present, but were not inspected and admitted, e.g., "entry without inspection" or "present without inspection." Parole in Place does not apply to others who have been admitted, e.g., overstays. An alien who is an overstay must be placed in removal proceedings or deferred action, or the overstay alien may be granted voluntary departure, as appropriate. Once the overstay alien has departed the United States, the alien may then be paroled pursuant to this protocol. Parole in Place does not apply to an alien that has been placed in proceedings.

3. Parole Term

a. Initial paroles will generally be approved for up to 90 days; however, an initial parole may be granted for up to 1 year, e.g., a witness who may be required to stay in the United States for an extended period in furtherance of a prosecution. Initial paroles of over 90 days require detailed justification on the DHS SPBP Form.

b. Re-paroles (extensions) may be approved for up to 1 year each.

4. Exceptions

a. S-Visas: This protocol does not apply to SPBPs in cases in which the "S" classification has been approved. In those cases, the policy and procedures of 8 CFR 212.14 and 214.2(t) will be followed.

b. Intelligence Community: This protocol does not apply to a parole requested by a non-LEA intelligence agency (such as the Central Intelligence Agency or the Defense Intelligence Agency) for national security reasons. These requests are typically routed through ICE's Office of Intelligence for review. ICE's Office of intelligence will coordinate these types of requests with the PHAB.

c. Removals/Transit: This protocol does not apply to paroles for Section 240 removal proceedings if detention is not available or appropriate, parole of stowaways for removal, deferred inspections, and similar situations.

d. Defendants: This protocol does not apply to paroles for the types of defendants listed below. Such criminal aliens will be processed at the time of entry and paroled into the United States for prosecution without following the procedures set forth in VI.B below. Detainers will be placed on the criminal aliens at the time of incarceration to ensure that they are returned to DHS custody for appropriate processing.

(1) Fugitive aliens who arrive in the United States without advance knowledge of DHS agencies will be placed in the custody of law enforcement officers upon arrival. Note: If DHS does have advance knowledge of a fugitive alien arriving in the United States, the procedures set forth in VI.B, including coordinating the arrival of the fugitive alien with the PHAB and POE as appropriate, will be followed. However, the fugitive alien's name will not be circulated to other LEAs by the PHAB (see VI.B.7.a, "Circulation and Concurrence"). The fugitive will be placed in the custody of law enforcement officers upon arrival.

(2) Prisoner Transfers: The United States is party to two international conventions (treaties) relating to the transfer of prisoners. Foreign governments requesting paroles must contact the International Prisoner Transfer Unit of the U.S. Department of Justice, Criminal Division, which will forward the requests to the PHAB for authorization in accordance with the Significant Public Benefit Parole Protocol for Other U.S. Law Enforcement Agencies.

(3) Aliens apprehended on the high seas or in United States waters by the U.S. Coast Guard, ICE, CBP, or other LEA marine officers and brought to the United States for proceedings.

(4) Aliens apprehended at the POEs, such as smugglers, those presenting fraudulent documents, and cooperating and other defendants.

B. Procedures

1. Request and Approval of SPBP

a. Forms

(1) DHS SPBP Form : The CBP or ICE officer will complete, sign, and submit a DHS Significant Public Benefit Parole Authorization Form (DHS SPBP Form) to the authorizing official for review and approval. A separate DHS SPBP Form must be completed for each alien for whom parole is requested. The DHS SPBP Form must be signed by the requesting officer and his or her immediate supervisor. The authorizing official will either approve or deny the parole and sign the DHS SPBP Form. The authorizing official or representative will electronically submit a copy of the approved or denied DHS SPBP Form (pages 1-3) to the PHAB immediately upon approval or denial (no later than 48 hours) and will retain a copy in the local file. Page 4 of the DHS SPBP Form, which contains sensitive investigative and personal information, will remain with the authorizing office and will not be transmitted to the PHAB.

(2) Form I-512 (Authorization for Parole of an Alien Into the United States) : If a parolee will arrive in the United States at a location other than a land border POE, the PHAB will coordinate with the foreign ICE Attaché Office and/or the U.S. Embassy or Consulate to issue transportation documents (Form I-512 or boarding letter) to the parolee overseas. Otherwise, the requesting officer will complete and submit a Form I-512 to the authorizing official for signature. A photograph of the parolee will be attached to the Form I-512 as soon as feasible. The form may be used to authorize single or multiple entries. The remarks section should include the length of parole (number of days authorized) and indicate whether a single entry or multiple entries are authorized. If the parole request is approved, the authorizing official will sign the Form I-512 on the line designated "Signature of Immigration Officer." The original Form I-512 is to be retained by the parolee. A copy of the form will be retained in the local file. Neither Form I-131 (Application for Travel Document) nor a fee is required for issuance of the Form I-512.

(3) Form I-94 (Arrival/Departure Record) : The requesting officer may prepare as much information as possible on the Form I-94 (e.g., the parolee's biographical information) on behalf of the CBP/OFO Officer at the POE. The CBP/OFO Officer will endorse the Form I-94 with the "Parole" stamp upon the parolee's arrival at the POE. The fee for the Form I-94 issued at land border POEs will be waived for SPBPs.

b. Record Checks : The requesting officer must perform the following criminal history record checks and immigration history and database queries for each parolee. The record checks include:

(1) TECS/IBIS-Treasury Enforcement Communications System/Interagency Border Inspection System.

(2) CIS-Central Index System.

(3) IDENT/ENFORCE-Enforcement Case Tracking System.

(4) NCIC-National Crime Information Center.

(5) IAFIS-Integrated Automated Fingerprint Identification System (when available; requires fingerprints).

(6) NADDIS-Narcotics and Dangerous Drugs Information System (can be queried through EPIC).

In addition, the requesting office will check the name of the parolee through the local Joint Terrorism Task Force to obtain additional information. If the parolee arrives 30 days after the date of authorization, updated record checks of the parolee will be performed.

c. Fingerprints and Photograph : The authorizing office will take fingerprints (10 prints) and photograph(s) for each parolee, and one complete set will be retained in the local file.

d. Alien File : The authorizing field office will assign an Alien Registration Number (e.g., A12 345 678 for the corresponding Alien File) for the parolee in accordance with existing procedures for creation of an A-file.

2. Review and Action by PHAB

a. Circulation and Concurrence : Upon receiving the DHS SPBP Form, the PHAB will review the documentation for completeness and circulate the Notice of Request for SPBP to the designated headquarters points of contact of the principal Federal LEAs (the Drug Enforcement Administration, the U.S. Marshals Service, the Federal Bureau of Investigation, CBP, and ICE) and the National Security Coordination Council at the Department of Justice (for informational purposes only). Concurrence with or objection to paroles must be submitted in writing by the deadline specified on the Notice of Request for SPBP (normally within 5 working days) unless extended by the PHAB. Absent exigent circumstances, the parolee's arrival in the United States will be scheduled to allow enough time for the PHAB to complete the circulation and concurrence process and return the results to the authorizing official. Under exigent circumstances, the authorizing official may authorize the alien to arrive before the completion of the PHAB circulation and concurrence process, however, the decision must be documented on the DHS SPBP Form, Part J, with a detailed explanation of the exigent circumstances in Part I.

b. Negative Information : If the PHAB discovers new information that negatively affects the decision to parole an alien, it will immediately pass the information to the authorizing field office and simultaneously to the appropriate CBP/OBP, CBP/OFO, or ICE/OI headquarters component. The headquarters component may discuss appropriate measures with the field office, such as implementing stricter controls over the parolee or terminating the parole.

c. Record-Keeping : The PHAB will maintain all SPBP information in the Parole Case Tracking System and will provide a parole case tracking number for each case.

3. Supervision of Parolees : The authorizing field office will be responsible for supervising and monitoring the whereabouts of the parolee while present in the United States and for ensuring his or her timely departure from the United States in accordance with the parole authorization.

a. Arrival : The authorizing field office will coordinate the travel and arrival of the parolee at the designated POE through the DFO or designee. Absent exigent circumstances, the parolee's arrival

in the United States will be scheduled to allow enough time for the PHAB to complete the circulation and concurrence process and return the results to the authorizing official (see Procedure VI.B.2.a, "Circulation and Concurrence" for more details). The authorizing field office will also ensure delivery of the Form I-512 at the designated POE (unless the Form I-512 is coordinated by the PHAB and issued by the U.S. Embassy or Consulate to the parolee). The CBP/OFO officer will issue the parolee a Form I-94 upon arrival. An officer from the authorizing field office should, generally, meet the parolee at the POE. The CBP/OFO Officer, upon the parolee's arrival at the POE, will:

- (1) Review the Form I-512 or boarding documents for accuracy, completeness, and signature.
- (2) Conduct up-to-date record checks, if necessary.
- (3) Record and enter the parolee's biographical information (e.g., name, date of birth, nationality, date of parole, Form I-94 number, and name of authorizing official, etc.) into TECS or other CBP systems.
- (4) Inform the authorizing official or the authorizing official's representative at the POE of any issues, concerns, or additional detrimental information pertaining to the status of the parolee. The CBP officer may elevate for resolution (as needed or appropriate through his or her chain of command) the discovery of significant differences between what the authorizing office knows of a parolee's serious criminal and/or terrorist background and what is discovered upon inspection at the time of parole. Every attempt should be made to address and resolve possible differences at the lowest level. If resolution cannot be reached between the CBP Officer and the authorizing official's on-site representative, the issue may then be elevated to POE management for resolution with the authorizing field office. If the matter is still not resolved, the DFO may contact the authorizing official (either the Border Patrol Sector CPA or the ICE SAC). If necessary, DFOs, Sector CPAs, and ICE SACs may elevate any remaining issues to their respective headquarters.
- (5) Each person paroled pursuant to these procedures must be processed into the IDENT/ENFORCE case system.
- (6) Issue and stamp the Form I-94. Process the Form I-512 in accordance with existing procedures for processing advance paroles.
- (7) Forward the parolee's Form I-94 arrival portion, in accordance with the Form I-94 mailing instructions, to the appropriate contractor for entry into the Nonimmigrant Information System (NIIS).
- (8) The fee for the Form I-94 issued at land border POEs will be waived for SPBPs unless otherwise directed.

b. Reporting: The authorizing field offices will report to the PHAB using the DHS Parole Tracking Form when the following occurs:

- (1) A parolee arrives at the POE (initial arrival).
- (2) A Parole in Place is granted.
- (3) A parolee fails to arrive in the United States within 30 days of the parole authorization.
- (4) An extension (re-parole) is authorized.
- (5) The parole is terminated.
- (6) A parolee departs or adjusts to an immigration status.
- (7) A parolee absconds.
- (8) There is a change in any significant information previously provided.

c. Benefits - Employment Authorization : Persons authorized SPBP are present in the United States at the discretion of and under conditions imposed by the authorizing office. U.S. Citizenship and Immigration Services (CIS) has agreed to process law enforcement sensitive requests for benefits, such as an Employment Authorization Document (EAD) related to SPBP, in a secure and expeditious fashion through their Fraud Detection National Security (FDNS) Unit. Applications for benefits, such as Form I-765 (Application for Employment Authorization), should be forwarded to the appropriate headquarters division of the organization seeking the benefit for a parolee. The appropriate ICE or CBP headquarters division will review and endorse the benefit application then coordinate directly with the CIS/FDNS Unit, which will adjudicate and produce the benefit document. The ICE or CBP headquarters unit will then forward the benefit document to the requesting field office. In accordance with the CIS memorandum entitled, "New Procedures for Issuance of Immigration Benefits/Documents in Law Enforcement and National Security Matters," dated December 19, 2003, "the fee will ordinarily be waived [for the EAD]...."

4. Re-Parole (Extension) : A request for re-parole will be submitted to the authorizing official via a new DHS SPBP Form, a new Form I-512 (if the alien intends to travel outside the United States), and a new Form I-94 before the expiration date of the parolee's authorized stay. Each new re-parole may be granted for up to 1 year. The new Form I-94 will be endorsed with a "Parole" stamp by the authorizing official. 1 The departure record of the original (expiring) Form I-94 and the arrival record of the new Form I-94 will be forwarded together, in accordance with the Form I-94 mailing instructions, to the appropriate contractor for entry into NIS.

5. Termination of Parole

- a. Decision : The authorizing official may terminate the parole at any time. The decision must be documented in writing, and all appropriate parties, including the PHAB, must be notified.
- b. Multiple Paroles : Parole terminates each time the parolee departs the United States (8 CFR 212.5(e)). The authorizing official *may* authorize multiple advance paroles on the Form I-512.

When the Form I-512 is approved for multiple advance paroles, a new Form I-94 will be issued at the POE to the parolee upon each arrival.

c. Failure To Depart (Absconding): If the parole has terminated and the parolee has not departed as required, the parolee will be treated as an absconder. The authorizing field office will immediately perform the following:

- (1) Terminate the parole.
- (2) Initiate removal proceedings.
- (3) Attempt to locate the parolee and provide all known information to the local CBP/OBP, ICE/OI, and CBP/OFO field office to help facilitate his or her recovery.
- (4) Submit a copy of the DHS Parole Tracking Form to the PHAB.

6. Special Situations at POEs: A parole may also be authorized in conjunction with an ongoing enforcement operation, such as a controlled delivery, a cold convoy, a pass-through, and a silent parole.

a. Prior Parole Approval: When the authorizing official approves a parole in advance of a special situation, the above policy and procedures will be followed, in accordance with other policies and procedures (e.g., directives and memorandums related to controlled deliveries, pass-throughs, etc.). If the subject is allowed to proceed without issuance of parole documentation, at the conclusion of the law enforcement activity, the subject must be documented and processed by the controlling officers as soon as feasible.

b. No Prior Parole Approval: Designated CBP/OFO officials at the POEs have parole authority for those aliens arriving at POEs without prior parole approval as a result of emerging enforcement actions, such as controlled deliveries, cold convoys, or silent paroles. In such situations, the POE officials and ICE agents at the POEs will coordinate efforts in advance to effect the controlled deliveries or cold convoys and approve the silent paroles if necessary.

2 After concurrence, the ICE agents will assume full responsibility for all aspects of the investigative activity, including the alien, the conveyance, and merchandise. If the subject is allowed to proceed without issuance of parole documentation, then the controlling officer must document and process the subject at the conclusion of the law enforcement activity. If issues arise that prevent the granting of parole, every effort should be made to resolve possible differences at the lowest level. If the matter cannot be resolved at the port level, it will be elevated through the chain of command to the DFO and SAC to resolve.

7. Parole in Place: The authorizing official, or designee, will complete a Form I-94 and endorse it with the "Parole" stamp. The authorizing office will forward the parolee's Form I-94 arrival portion, in accordance with the Form I-94 mailing instructions, to the appropriate contractor for entry into NIIS. The authorizing official or his or her representative will electronically submit a copy of the DHS Parole Tracking Form to the PHAB. (See Policy VI.A.2, "Parole in Place," for appropriate use of parole in place.)

8. Parole of Family Members: Paroles are temporary; therefore, family members should be paroled only under extraordinary circumstances, such as legitimate physical threats to family members. The threat must be clearly documented on the DHS SPBP Form.

9. Fees : In general, all fees will be waived for a parole approved for significant public benefit. If the parolee must depart and reenter the United States for personal reasons, the fees will not be waived.

C. Questions or Concerns Regarding the Process: Any questions or concerns regarding this protocol should be addressed to the PHAB at (202) 732-8164 or by fax at (202) 732-8201.

Michael J. Garcia *5-9-05* *Robert C. Bonner* *9-22-05*

Michael J. Garcia	Date	Robert C. Bonner	Date
Assistant Secretary		Commissioner	
U.S. Immigration and Customs Enforcement		U.S. Customs and Border Protection	

Chapter 20: Removal Process: Relief From Removal

References:

INA: 101, 208, 212, 236, 237, 240A, 241, 242, 244, 245, 248, 249

Regulations: 8 CFR 10

03.43, 208, 1240.20, 1240.21, 1240.33, 1240.34, 241.6, 245, 249, 274A

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20.1 Relief from Removal.

Aliens in removal proceedings and those with final orders of removal may be eligible for certain forms of relief. It is important for you to be familiar with these forms of relief because aliens under your docket control may be eligible. You may be required to cease all removal actions on eligible detained and non-detained aliens. Additionally, certain forms of relief may require the administrative closure of removal proceedings or the release of aliens in custody. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) eliminated some forms of relief and created others. You may encounter an alien under docket control whose removal proceedings were initiated prior to the enactment of IIRIRA. Therefore, you must know the forms of relief that were available prior to IIRIRA and know what actions each Service officer should take to facilitate each particular form of relief.

First, consider the alien's immigration status and criminal history before pursuing relief from removal. Run a criminal-history check if you cannot find one conducted during the past 90 days.

The Office of the Principal Legal Adviser reviews the contents of each A file before presenting the case to the Executive Office for Immigration Review. If the file does not contain a current criminal history (within 90 days), the attorney will not proceed with the case and inform you of the incomplete record. You will then run the required criminal-history check so the Office of the Principal Legal Advisor can verify the record and proceed with the request for relief.

20.2 Cancellation of Removal.

(a) General. Cancellation of removal is a discretionary form of relief that may be granted to an alien during the course of a removal hearing. A detailed description of cancellation of removal may be found at INA 240A and 8 CFR 1240.20. Cancellation of removal applies to aliens placed in removal proceedings after April 1, 1997. Normally, cancellation of removal can be granted only by an immigration judge or by the Board of Immigration Appeals. However, a special class of aliens, defined by section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), Pub. L. 105-100 is eligible to have cancellation of removal (or suspension of deportation) favorably adjudicated by an asylum officer. Before IIRIRA became effective, suspension of deportation was the form of relief very similar to cancellation of removal for nonpermanent residents. The eligibility criteria for suspension of deportation can be found at 8 CFR 1240.21. This regulation refers to section 244(a) of the Act, as in effect prior to April 1, 1997.

(b) Eligibility Criteria. An eligible alien may apply for cancellation of removal on Form EOIR-42A, Application for Cancellation of Removal for Certain Permanent Residents, or Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents. Eligibility criteria for permanent residents may be found in section 240A(a) of the Act. Eligibility criteria for non-permanent residents may be found in section 240A(b) of the Act.

(c) Closing Actions. Once a decision to grant cancellation of removal has been rendered, and that decision becomes final, the case must be closed in DACS. Departure Cleared Status code B in DACS should be used to close the case.

(1) Cancellation of Removal Denied. If cancellation is denied, and voluntary departure has not been granted, the deportation officer should proceed with normal removal actions, including DACS update.

(2) Cancellation Granted to Permanent Resident. If cancellation of removal is granted to a Lawful Permanent Resident Alien, the alien retains status and the case must be closed in DACS to reflect the relief granted. Departure Cleared Status code B in DACS should be used to close the case.

(3) Cancellation Granted to Nonpermanent Resident. If cancellation of removal is granted to a nonpermanent resident, the alien becomes eligible for adjustment of status and should be processed accordingly. The Deportation Branch may assist the Examinations Branch in processing these cases. The case must be closed in DACS to reflect the relief granted. Departure Cleared Status code B in DACS should be used to close the case.

20.3 Asylum.

Asylum, pursuant to section 208 of the Act, is among the most common forms of relief sought by aliens who are in removal proceedings. Regulations governing jurisdiction, filing, employment authorization, and adjudication are found in 8 CFR Part 208. Except as otherwise provided in section 208(a)(2) of the Act, asylum claims must be filed within one year of entry into the United States. Asylum claims are ordinarily first adjudicated by an Asylum officer. However, once an alien is placed into removal proceedings, an initial asylum claim may also be filed with the immigration judge.

If an alien in custody indicates they would like to apply for asylum, provide them with Form I-589, Application for Asylum and Withholding of Removal, and supporting forms. You are required to advise all aliens of the availability of free legal services. [See detention standards in Appendix 26-1 of this manual.]

Once an alien is granted asylum by an immigration judge during the course of a removal hearing, the proceedings are terminated. Once asylum is granted, employment authorization may be granted pursuant to 8 CFR 274a.12(a)(5). The case must be closed to reflect the relief granted. Departure Cleared Status code B in DACS should be used to close the case.

Motions to Reopen or Reconsider. The Service is not prohibited from filing a motion to reopen or reconsider in accordance with 8 CFR 3.2 (Motions before BIA) and 3.23 (Motions before the Immigration Judge). If conditions change in the country from which asylum has been granted, there was fraud in the application, or other conditions exist, the BIA or an immigration judge may terminate the prior grant of asylum (see 8 CFR 208.24).

20.4 Withholding or Deferral of Removal.

(a) General. Other forms of relief, similar to asylum, are withholding of removal and deferral of removal. Normally, an immigration judge or the Board of Immigration Appeals makes the decision on withholding or deferral of removal. An alien will be considered for these forms of relief if the alien has filed Form I-589 for asylum in removal proceedings.

(b) Withholding of Removal Based on Protected Characteristic in the Refugee Definition. Section 241(b)(3) of the Act restricts the removal of an alien to a country where the alien's life or freedom would be threatened because of the alien's race, religion, nationality, membership in a particular social group, or political opinion. Aliens convicted of particularly serious crimes both inside and outside of the United States, aliens deemed to pose a security risk to the United States, and aliens who have participated in the persecution of others are ineligible for withholding of removal.

(c) Withholding of Removal under the Convention Against Torture. The United States is obligated to abide by the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture). Section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998, Pub L. 105-277, provides for how the U.S. will comply with the Convention Against Torture. Under Article 3 of the Convention Against Torture, the United States has agreed not to return a person to another state where he or she would be tortured. The regulations regarding claims under the Convention Against Torture are found at 8 CFR 208.16, 208.17 and 208.18. Aliens under docket control may qualify to apply for withholding under these regulations. An alien granted withholding of removal may be granted employment authorization.

(d) Limitations of Withholding of Removal. The following are limitations to this form of relief:

(1) Removal to Third Country. Withholding of removal is country specific. There is no prohibition on removing an alien to a third country where the alien would be safe from persecution or torture.

(2) Does Not Qualify an Alien for Adjustment of Status. There is no provision for an alien who has been granted withholding of removal to adjust status to that of a Lawful Permanent Resident based on the grant.

(3) Motions to Reopen or Reconsider. The Service is not prohibited from filing a motion to reopen or reconsider in accordance with 8 CFR 3.2 (Motions before BIA) and 3.23 (Motions before the Immigration Judge). If conditions change in the country to which withholding of removal has been granted, there was fraud in the application, or other

conditions exist, the BIA or an immigration judge may terminate withholding previously granted by an immigration judge (see 8 CFR 208.24).

(e) Deferral of Removal under the Convention Against Torture can be found in 8 CFR 208.17. An alien who is ineligible for withholding of removal because of criminal activity, security reasons or persecution of others, may be granted deferral of removal to the country where it is more likely than not the alien would be tortured. There is no prohibition on removing an alien to a third country where the alien would be safe from torture. Deferral of removal does not negate or limit the application of law, regulation, or policy relating to the detention of the alien. Adjustment of status is not available to an alien granted deferral of removal. Deferral of Removal may be terminated in accordance with 8 CFR 208.17(d), 8 CFR 208.17(f) and 8 CFR 208.18(c). The alien can request that deferral be terminated under 8 CFR 208.17(e).

20.5 Private Bills.

This subject is discussed in detail in Chapter 23 of the Special Agent's Field Manual.

20.6 Restoration or Adjustment of Status and Waivers.

(a) General. If an alien is granted adjustment of status or relief by an immigration judge, the Deportation Branch must close the case in DACS. Departure cleared status B should be used to close these cases. Depending on local office policy, deportation officers may assist in further processing of the alien for an alien registration card if applicable.

(b) Adjustment of Status. Some aliens in or subject to removal proceedings may seek relief from deportation through adjustment of status to permanent residency. Such adjustment may be granted by an immigration judge during the course of removal proceedings. Additionally, actual commencement of removal proceedings may be deferred by the arresting or processing officer where it appears the alien may be entitled to some form of relief. Section 245 of the Act is the principal authority for adjustment of status to permanent resident. Occasionally, adjustment may be granted pursuant to section 249 of the Act, Creation of Records of Lawful Admission for Permanent Residence, or one of several other special adjustment provisions set by Congress from time to time.

Not all aliens, even those with an approved visa petition, are eligible for adjustment. If an alien has an approved visa petition, but no visa number is available, he or she may not apply for adjustment. Section 204(a) of the Act specifies those aliens who have immediate relative status, as well as those with preference status. Categories of those who are not eligible are described in detail within section 245 of the Act. Each of the other special provisions also has specific conditions and restrictions.

(c) Discretionary Waivers Which May Apply in Removal Proceedings. An alien in removal proceedings may apply for certain waivers which overcome the grounds for removal. Section 237 of the Act contains the terms and conditions of waivers which apply to certain classes of deportable aliens. Section 212 of the Act contains the terms and conditions of waivers which apply to certain classes of aliens who are inadmissible or were inadmissible at time of entry or adjustment of status.

(d) Reinstatement to Status and Change of Status. In some instances, an alien who has fallen out of status may be eligible for reinstatement to his or her original status or may be eligible for a change to another nonimmigrant status. Questions regarding such matters should be referred to the local Examinations Branch for consideration.

(e) Temporary Protected Status (TPS). Section 244 of the Act provides for "Temporary Protected Status" for nationals of countries designated by the Attorney General, based on natural disasters, civil unrest, etc. Section 20.9 of this chapter contains more information on TPS. Also, you may want to view the

information on TPS found at
http://www.immigration.gov/graphics/services/tps_inter.htm.

20.7 Stay of Deportation or Removal.

(a) General. A stay of deportation or removal reflects an administrative decision by the Service or a reviewing body that removal against an alien should not proceed. It may be granted after the completion of a removal proceeding when the only remaining step in a case is the physical removal of the alien. A stay of deportation or removal is not considered an immigration benefit or waiver because it only bestows temporary relief from removal upon the alien.

(b) Stays Granted by the Service. If a final order has been entered based on deportability, the District Director has wide discretion to grant a stay of deportation or removal. If the final order has been entered against an inadmissible arriving alien, the District Director may stay immediate execution of the order as explained in 20.7(b)(2) below.

(1) Deportable Aliens Ordered Removed. When there are compelling humanitarian factors, or when a stay is deemed to be in the interest of the government, a District Director may grant a stay of deportation or removal for such period of time and under such conditions as he or she deems necessary. A stay of deportation or removal under this paragraph may also be granted by a District Director upon his or her own initiative without application being made by the alien. The detention rules found at 8 CFR Part 241 are applicable to a deportable alien granted a stay of deportation or removal.

(2) Inadmissible Arriving Aliens Ordered Removed. Section 241(c)(2) of the Act allows the Attorney General to stay the removal of an alien arriving at a port of entry. However, a stay of removal under this section requires a determination either that immediate removal is not practicable or proper, or the alien is needed to testify in the prosecution of another person in a criminal trial. Aliens granted a stay because their removal is impracticable or improper must be detained. Aliens who are granted a stay to testify in a criminal prosecution, however, may be released if certain conditions are met. The alien must post a bond of at least \$500, must agree to appear when required to testify and for removal, and must agree to any other conditions prescribed by the Attorney General.

(c) Stays for Appeals or Judicial Review. Timely filed requests for post hearing reviews may stay removal depending on the case. However, the District Director may, in his or her discretion, remove an alien who has filed an untimely appeal, unless the court, an immigration judge, or the BIA has affirmatively stayed removal.

(1) Appeals to the Board of Immigration Appeals (BIA). Under 8 CFR 3.6, the timely filing of an appeal of a decision by the Immigration Court will operate as an automatic stay. This applies to appeals of all decisions by the Immigration Court except an appeal

of a denial of a motion reopen or reconsider or denial of a request for a stay of deportation or removal. The Service shall take all reasonable steps to comply with a stay granted by an immigration judge or the BIA. However, such a stay shall cease to have effect if granted (or communicated) after the alien has been placed aboard an aircraft or other conveyance for removal and the normal boarding has been completed. See 8 CFR 241.6(c).

(2) Requests for Judicial Review. The filing of a petition seeking review in federal court does not stay the removal of an alien unless the reviewing court affirmatively orders a stay. See 8 CFR 241.3 and section 242(b)(3)(B) of the Act.

(3) Motions to Reopen or Reconsider. The filing of a motion to reopen or motion to reconsider before the Immigration Court or BIA does not operate as an automatic stay of deportation or removal, unless the removal order was issued in absentia. See 8 CFR 1003.2(f) and 8 CFR 1003.23(b)(1)(v).

(d) Injunctive Relief from Removal. In conjunction with other proceedings, a U.S. District Court Judge or other judge will sometimes issue an order that prohibits a Service action. On occasion the removal of an alien or class of aliens will be stayed by a temporary restraining order or an injunction. A temporary restraining order is an emergency remedy of short duration. There are many kinds of injunctions and the period of time covered by an injunction may vary. Close communication with the United States Attorney and the Office of General Counsel through your District Counsel's office is essential to insure compliance with the order of the court.

(e) Adjudication and Decision. Title 8 CFR 241.6 governs administrative stays of removal. An alien ordered removed may apply for a stay of deportation or removal on Form I-246, Application for Stay of Deportation or Removal. The application for administrative stay of removal should be filed with the District Director having jurisdiction over where the alien resides. There are a multitude of reasons for filing for a stay. Common reasons include the need for urgent medical treatment, disposition of property, and unrelated legal proceedings. The adjudication of a stay of deportation or removal is often delegated to a deportation officer. Care should be exercised to verify any claimed facts, such as serious medical problems, etc. The decision of the District Director is final and may not be appealed administratively. Neither the filing of the application request nor the failure to receive notice of disposition of the request shall delay removal or relieve the alien from strict compliance with any outstanding notice to surrender for deportation or removal.

(f) Employment Authorization. There is no statutory or regulatory authority to grant employment authorization to an alien based on a grant of a stay of deportation or removal.

20.8 Deferred Action.

(a) General. A District Director may, in his or her discretion, recommend deferral of (removal) action, an act of administrative choice to give some cases lower priority and in no way an entitlement, in appropriate cases. The deferred action category recognizes that the Service has limited enforcement resources and that every attempt should be made administratively to utilize these resources in a manner which will achieve the greatest impact under the immigration laws. In making deferred action determinations, the factors listed in paragraph (b), among others, should be considered.

Deferred action does not confer any immigration status upon an alien, nor is it in any way a reflection of an alien's immigration status. It does not affect periods of unlawful presence as defined in section 212(a)(9) of the Act, and does not alter the status of any alien who is present in the United States without being inspected and admitted. Under no circumstances does deferred action operate to cure any defect in status under any section of the Act for any purpose. Since deferred action is not an immigration status, no alien has the right to deferred action. It is used solely in the discretion of the Service and confers no protection or benefit upon an alien. Deferred action does not preclude the Service from commencing removal proceedings at any time against an alien. Any request by an alien (or another party on behalf of such alien) for deferred action should be considered in the same manner as other correspondence. The alien should be advised that he or she may not apply for deferred action, but that the Service will review the facts presented and consider deferred action as well as any other appropriate course of action.

(b) Factors to be Considered. The following factors, among others, should be evaluated as part of a deferred action determination:

(1) The Likelihood That the Service Will Ultimately Remove the Alien Based on Factors Including:

likelihood that the alien will depart without formal proceedings (e.g., minor child who will accompany deportable parents);

age or physical condition affecting ability to travel;

the likelihood that another country will accept the alien;

the likelihood that the alien will be able to qualify for some form of relief which would prevent or indefinitely delay removal.

(2) Sympathetic Factors: The presence of sympathetic factors which, because of a desire on the part of administrative or judicial authorities to reach a favorable decision, could result in a distortion of the law with unfavorable implications for future cases.

(3) Priority Given to a Class of Deportable Aliens: Whether or not the individual is a member of a class of deportable aliens whose removal has been given a high enforcement priority (e.g., dangerous criminals, alien smugglers, drug traffickers, terrorists, war criminals, habitual immigration violators).

(4) Service Cooperation with Other Agencies: Whether the alien's continued presence in the U.S. is desired by local, state, or federal law enforcement authorities for purposes of ongoing criminal or civil investigation or prosecution.

(c) Procedures. Normally a decision to recommend deferred action is made by the District Director, but in limited circumstances, the decision may be made by the Eastern Service Center Director.

(1) District Director. If the District Director recommends that removal action in an alien's case be deferred, the Director shall advise the Regional Director of such recommendation using Form G-312, Deferred Action Case Summary. The District Director shall sign the recommendation and shall explain the basis for his or her recommendation. The Regional Director shall consider the recommendation and determine whether further action on the alien's case should be deferred. The decision whether or not to defer action shall be communicated in writing by the Regional Director to the District Director. Upon receipt of notification of deferral by the Regional Director, the District Director shall notify the applicant, by letter, of the action taken and advise the alien that he or she may apply for employment authorization in accordance with 8 CFR 274a.12(c)(14). A decision not to defer action in such a case does not need to be separately communicated to the alien.

(2) Center Director (Eastern). In limited circumstances, Eastern Service Center Director may defer action on removal of an alien. Upon approval of an Form I-360 petition by a battered or abused spouse or child in his or her own behalf, the director shall separately consider the particular facts of each case and determine if deferred action is appropriate. Although the approval of such a petition will weigh in favor of deferred action, each decision must be considered individually, based on all the facts present and the factors discussed above. Upon deferral of action, the Center Director shall advise the alien, by letter, of the action taken and advise him or her of eligibility to request employment authorization. A decision not to defer action in such a case does not need to be separately communicated to the alien. Upon deferral of removal action, the Center Director shall include a copy of the G-312 in the alien's A-file and forward the file to the local Service office having jurisdiction over the alien's residence for docket control.

(d) Employment Authorization. Although deferred action is not an immigration status, an alien may be granted work authorization based on deferred action in his or her case, pursuant to 8 CFR 274a.12(c)(14).

(e) Periodic Review. Interim or biennial reviews should be conducted by both District and Regional Directors to determine whether deferred action cases should be continued or the alien removed from the deferred action category. District

reviews must determine if there is any change in the circumstances of the case and report any pertinent facts to the Regional Director. Results of the review and a recommendation to continue or terminate deferred action shall be reported to the Regional Director via memorandum. The Regional Director shall endorse the memorandum with his or her decision and return it to the District Director for inclusion in the alien's file.

District Directors must also review deferred action cases within their jurisdiction which were originally granted by the Eastern Service Center Director. Changed circumstances in such cases must be reported to the Center Director for consideration of terminating the deferred action.

Regions should compare statistics among their districts to ensure consistent application of this highly sensitive program.

(f) Termination of Deferred Action. During the course of the periodic review, or at any other time if the District Director determines that circumstances of the case no longer warrant deferred action, he or she shall notify the Regional Director of the changed circumstances and recommend termination. The Regional Director shall determine if the deferred action should be terminated and notify the District Director of the decision. The District Director shall, in turn, notify the alien of the decision by letter. The alien is not entitled to an appeal of this decision. The Eastern Service Center Director may also terminate deferred action in any case he or she originally granted. If the Eastern Service Center Director terminates deferred action, he or she must report the decision to the Regional Director and to the appropriate District Director.

Upon termination of deferred action, any relating employment authorization must be revoked.

20.9 Exercising Discretion.

(a) Distinguishing Prosecutorial from Adjudicative Discretion. In the course of their duties, Service officers are likely to encounter a variety of situations in which they may be called upon to make discretionary decisions. The legal requirements, and the available scope of discretion, will depend upon the type of discretionary decision being made. There are two general types of discretion: prosecutorial (or enforcement) discretion, and adjudicative discretion.

Prosecutorial discretion is a decision by an agency charged with enforcing the law to enforce, or not enforce, the law against someone. To put it another way, a prosecutorial decision is a choice whether to exercise the coercive power of the state in order to deprive an individual of a liberty or property interest, under a law that provides the agency with authority to take such an action. The term "prosecutorial" can be deceptive, because the scope of decisions covered by this doctrine include decisions, such as whether to arrest a suspected violator, other than the specifically "prosecutorial" decision whether to file legal charges against someone. Adjudicative discretion, by contrast, involves the affirmative decision whether to grant a benefit under adjudicative standards and procedures provided by statute, regulation or policy that provide the agency with a measure of discretion in determining whether to provide the benefit.

The distinction between the discretion exercised in an adjudicative decision regarding an affirmative grant of a benefit and a prosecutorial decision is a fundamental one; yet, it is sometimes blurred and difficult to determine in the immigration context. Some decisions that may, on their face, look like a benefit grant -- such as an INS stay of removal or grant of deferred action -- really are just mechanisms for formalizing an exercise of prosecutorial discretion. Others, such as voluntary departure, include elements of both "benefit" and enforcement. Many proceedings combine both adjudicative and prosecutorial discretion, such as a removal proceeding in which an asylum application, adjustment of status, or a request for cancellation of removal, is at issue. Officers who are in doubt about what standards may apply to a decision because of uncertainty about what type of discretion is involved should consult their supervisor and/or Service counsel.

Service enforcement decisions involving prosecutorial discretion may involve either a liberty or a property interest. Decisions involving a liberty interest that are likely to be relevant to a deportation officer's duties include:

- whom to arrest;

- whom to refer for criminal prosecution;

- whether or not to put an alien in removal proceedings, as opposed to offering some lesser consequence of his or her immigration violation such as voluntary departure or voluntary return, or simply not pursuing the matter further;

whether to place an alien in detention (but note that detention discretion has been limited by statute, such as section 236(c) of the Act) and

whether to execute an order of removal.

INS prosecutorial decisions involving property interests include whether to seek a carrier fine, civil document fraud or employer sanctions money penalty, or forfeiture against INA violators.

Adjudicative discretion, on the other hand, is exercised in certain specific types of benefit applications such as:

- adjustment of status;
- change of nonimmigrant status;
- extension of nonimmigrant stay;
- asylum;
- cancellation of removal;
- voluntary departure
- certain employment authorization requests; and
- various waivers of inadmissibility.

Such discretionary action is specifically provided in statute or regulation for these cases. Other types of adjudicative actions, such as visa petitions, may not have any discretionary component.

(b) Exercising Prosecutorial Discretion. The "discretion" in prosecutorial discretion means that prosecutorial decisions are not subject to review or reversal by the courts, except in extremely narrow circumstances. For this reason, it is a powerful tool that must be used responsibly. Because the Service has only limited resources, decisions must regularly be made concerning which cases are the most appropriate use of these resources. INS officers are not only authorized by law but also expected to exercise discretion in a judicious manner at all stages of the enforcement process -- from planning investigations to enforcing final orders -- subject to their chains of command and to the particular responsibilities and authorities applicable to their specific position. Decisions whether or not to initiate removal cases or take other enforcement action must be made consistently and the officer must be able to articulate their reasoning behind their actions. Each exercise of prosecutorial discretion must consider the individual facts of the case. Arbitrary application of enforcement tools must be avoided.

For a legal opinion on the exercise and limitations of prosecutorial discretion within the Service, see the Special Agent's Field Manual Appendix 14-5. A memorandum from the Commissioner, dated Nov. 17, 2000, also discusses prosecutorial discretion (see Special Agent's Field Manual Appendix 14-6).

(c) Exercising Adjudicative Discretion. Each type of adjudicative benefit has specific eligibility requirements and includes certain restrictions. Individuals denied some benefits (such as asylum) as a result of a discretionary decision by the Service might have further opportunities for review of the decision, while other discretionary decisions (such as denial of employment authorization) may not be subject to appeal. In an adjudicative decision involving an exercise of discretion, the criteria that should be applied may be found in precedent decisions or in Service regulations. These regulations and decisions should always be consulted for guidance. Whenever an adverse adjudicative decision involving an exercise of discretion is made, the grounds for such denial must be given in the notice of denial. Failure to do so may result in judicial review premised on an abuse of discretion. [See *Jarecha v. INS*, 417 F. 2nd 220 (5th Cir. 1979).]
(Revised DD00-06)

20.10 Temporary Protected Status vs. Deferred Enforced Departure.

Section 244 of the INA contains information concerning Temporary Protected Status (TPS). The Attorney General of the United States, after consultation with appropriate agencies of the Government, may designate nationals of any foreign state (or a part of such foreign state) as deserving of TPS. In addition to nationals, the Attorney General may also include aliens who have no nationality but last resided in the designated foreign state. Aliens who have been granted TPS may not be removed from the United States during the designated protected period and qualify for work authorization. The initial period of designation is not less than 6 months and not more than 18 months. At least 60 days prior to the expiration of the designated period, the Attorney General must review the conditions of the designated state to determine if TPS is still warranted. Extensions of TPS designations normally are in 6 to 18 month increments at the Attorney Generals discretion. Applications for TPS are made on Form I-821.

(a) Conditions that may warrant TPS designation for a particular state. The Attorney General may grant TPS if there is an on-going armed conflict within the state that may cause harm to aliens that are returned to that state. Earthquakes, floods, droughts, epidemics or other environmental disasters that would result in temporary, but substantial, disruptions of living conditions may result in TPS designations. A foreign state being temporarily unable to handle the return of nationals of that state may also result in a designation. Granting a TPS designation to a particular state must not be contrary to the interests of the United States.

(b) TPS Impact on Removals. Aliens who have registered for TPS may not be removed from the United States. Denial of TPS benefits results in the continuation of the removal process. Aliens who have been granted TPS benefits receive an automatic stay of removal and cannot be removed until the expiration of the designated removal period. A grant of TPS does not affect the detention status of an alien who is subject to mandatory detention; however, it should be considered when determining the custody of an alien who may be releasable. Aliens who are in removal proceedings normally have their case administratively closed. The decision screen in DACS should be updated but the case remains open under docket control.

(c) Deferred Enforced Departure (DED). Unlike TPS, DED is not statutory and emanates from the United States Presidents constitutional powers to conduct foreign relations. TPS may be granted by the Attorney General but DED must come from the President in the form of an Executive Order. Presidential orders of DED are published in the Federal Register. Aliens who have been granted DED are normally granted work authorization per 8 CFR 274A.12(A)(11). Aliens who have been granted DED may not be removed from the United States until the designated period of DED has expired. If an alien falls under the protection of DED, the comment screen in DACS should be updated.

20.11 Nicaraguan Adjustment and Central American Relief Act (NACARA) and Haitian Refugee Immigration Fairness Act (HRIFA).

(a) Nicaraguan Adjustment and Central American Relief Act (NACARA). The NACARA amending the INA through Public Law 105-100 was signed into law on November 19, 1997. It provides various immigration benefits and relief from removal to certain Central Americans, Cubans and nationals of former Soviet bloc countries. Specifically, the law provides that eligible Nicaraguans or Cubans can be considered for adjustment of status to that of a permanent resident alien. Additionally, certain Guatemalans, Salvadorans and nationals of former Soviet bloc countries were eligible to apply for suspension of deportation or special rule cancellation of removal under the criteria that existed for suspension of deportation prior to the enactment of IIRIRA.

(b) Nicaraguans and Cubans eligible for adjustment to lawful permanent residence (LPR). Nicaraguans or Cubans who could establish they had been physically present in the United States for a continuous period beginning not later than December 1, 1995, and ending not earlier than the date the application for adjustment is granted, and who were not inadmissible to the United States under any provision of Section 212(a) of the INA except paragraphs (4), (5), (6)(A), (7)(A) and (9)(B), could apply for adjustment of status to that of an LPR. See 8 CFR 245.13(a). A spouse, minor child, or unmarried son or daughter of an eligible principal beneficiary may also apply for benefits as a dependent provided the qualifying relationship existed when the principal beneficiary was granted adjustment of status. Under 8 CFR 245.13(c), certain waivers of inadmissibility may be available to aliens who are otherwise inadmissible under section of 212 of the Act, if applicable, in accordance with 8 CFR 212.7. Pursuant to 8 CFR 245.13(c)(2), a regulatory waiver may be available to aliens who are inadmissible under sections 212(a)(9)(A) and 212(a)(9)(C) of the Act.

(c) Benefits for Guatemalans, Salvadorans. In order to be eligible for suspension of deportation or special rule cancellation of removal, Guatemalans and Salvadorans must demonstrate that they were ABC class members who had not been apprehended at the time of entry after December 19, 1990, or who filed an application for asylum on or before April 1, 1990, either by filing an application with the Service or filing the application with the Immigration Court and serving a copy of that application on the Service. In addition, the applicant shall not have been convicted of an aggravated felony. Such a qualifying alien may apply for special rule cancellation of removal by the process discussed below.

(d) Former Soviet Bloc Nationals. Aliens who have not been convicted of a aggravated felony, and who entered the United States on or before December 31, 1990, applied for asylum on or before December 31, 1991, and, at the time of

filing the asylum application, were nationals of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia or any former state of Yugoslavia, may apply for special rule cancellation of removal by the process discussed section 20.11(e).

(e) Application Process for Special Rule Cancellation of Removal. Special rule cancellation of removal is adjudicated under the same standards that existed for suspension of deportation prior to enactment of IIRIRA. In order to be eligible, an alien may not have been convicted of an aggravated felony. A principal applicant for special rule cancellation of removal (an alien described in paragraphs (a)(1) or (a)(2) of 8 CFR 240.61) shall be presumed to have established that deportation or removal from the United States would result in extreme hardship to the applicant or to a qualifying relative. See 8 CFR 240.64(d). The Service can rebut the presumption of extreme hardship by proving that it is more likely than not that neither the applicant nor a qualifying relative would suffer extreme hardship if the applicant were deported or removed from the United States. See 8 CFR 240.64(d)(2) and (3). Where an application is filed with the Service, if the presumption of hardship is rebutted, the application can be dismissed and the case can be referred to the Immigration Court where the applicant can have another review of the application. If the Immigration Court determines that extreme hardship will not result from deportation or removal from the United States, the application will be denied. The applicant has the burden of also proving that he or she has been continuously physically present in the United States for a period of not less than 7 years immediately preceding the date the application was filed, and that s/he has been a person of good moral character during that period.

(f) Derivative Applicants for Special Rule Cancellation of Removal. An alien who is the spouse, child, or unmarried son or daughter of an individual described in 8 CFR 240.61(a)(1), (2), or (3), at the time a decision is made to suspend the deportation or cancel the removal of that individual may also apply for suspension of deportation or special rule cancellation of removal. Such derivative applicants do not get the presumption of extreme hardship, and accordingly have the burden of proving that their deportation or removal would result in extreme hardship to themselves or to a qualifying relative. The applicant has the burden of also proving that he or she has been continuously physically present in the United States for a period of not less than 7 years immediately preceding the date the application was filed, and that s/he has been a person of good moral character during that period.

(g) Detention and Removal actions regarding NACARA applicants. Although the deadline for filing the applications expired on March 31, 2000, 8 CFR 3.43 allowed certain aliens to file a motion to reopen under section 203(c) of Public Law 105-100. The deadline for filing the motions to reopen expired on June 19, 2001. Regardless of the expired deadlines, you may encounter aliens who still have pending applications for benefits under NACARA. If you encounter an alien

who claims to have a NACARA application pending you should check all applicable Service databases to determine whether the application is still pending. In addition, criminal record checks must be conducted to determine if the alien is subject to mandatory detention. If the alien has no criminal record and the NACARA application is still pending, s/he should not be detained. The following are three scenarios involving aliens whose applications have been denied and the actions that should be taken in each case:

(1) Removal proceedings have never been initiated. In this case, the alien's application has been denied and the alien should be referred to Investigations for the processing of a Form I-862, Notice to Appear.

(2) Removal proceedings were initiated at one time but were administratively closed to allow the alien an opportunity to apply for NACARA benefits. The Service should file a motion to recalendar with the Immigration Court to allow the hearing process to continue. Custody determinations should be made on each case individually using existing custody determination guidelines and the guidance found in the December 18, 1997 memorandum signed by the Executive Associate Commissioner, Office of Field Operations. See Interim Guidance Nicaraguan Adjustment and Central American Relief Act.

(3) The alien has a pre-existing Order of Removal that was held in abeyance due to the NACARA application. Custody determinations should be made on a case-by-case basis utilizing existing custody determination guidelines and the guidance found in the December 18, 1997 memorandum signed by the Executive Associate Commissioner, Office of Field Operations. The Service must complete a Form I-290(c) and serve it on the Immigration Court. The court will make the determination if the NACARA benefit was properly denied. If the court determines the benefit was properly denied, the removal actions may proceed. If the determination is made that the denial was not proper, the court will adjudicate the application.

Aliens who had been ordered deported were eligible to apply for adjustment under the NACARA. The filing of an application automatically held the removal of the alien in abeyance. If an alien was a mandatory detention case, the filing of the application did not affect the alien's custody.

Additional information about NACARA 203 rules may be found in 8 CFR 240.60 and 8 CFR 3.43. If questions arise involving NACARA applicants, consult the District Counsels office or the Examinations branch.

(h) Haitian Refugee Immigration Fairness Act (HRIFA). The HRIFA became law on October 21, 1998, under Public Law L. 105-277. Division A, Title IX of the law dealt specifically with HRIFA. Section 902 of the HRIFA provided for the adjustment of status to that of lawful permanent resident for certain Haitians. Haitians wishing to apply for adjustment of status under HRIFA must have submitted their applications on Form I-485, Application to Register Permanent Residence or Adjust Status using I-485 Supplement C, HRIFA Supplement to

Form I-485 Instructions, prior to March 31, 2000. Although the deadline has passed, officers may still encounter Haitians who have applications pending for this relief.

(i) Detention and Removal actions regarding applicants for benefits under HRIFA. The removal of Haitians who were clearly eligible for adjustment under HRIFA was held in abeyance. Officers encountering aliens who claim to have a HRIFA application pending should check all applicable Service databases to determine whether the application is still pending. In addition, criminal record checks must be conducted to determine if the alien is subject to mandatory detention. If the alien has no criminal record and the HRIFA application is still pending, s/he should not be detained. The following are three scenarios involving aliens whose applications have been denied and the actions that should be taken in each case:

(1) Removal proceedings have never been initiated. In this case, the aliens application has been denied and the alien should be referred to Investigations for the processing of a Form I-862, Notice to Appear.

(2) Removal proceedings were initiated at one time but were administratively closed to allow the alien an opportunity to apply for HRIFA benefits. The Service should file a motion to recalendar with the Immigration Court to allow the hearing process to continue. Custody determinations should be made on each case individually using existing custody determination guidelines and the guidance found in the December 22, 1998 memorandum signed by the Executive Associate Commissioner, Office of Field Operations. See Interim Guidance Haitian Refugee Immigration Fairness Act of 1998 (HRIFA).

(3) The alien has a pre-existing Order of Removal that was held in abeyance due to the HRIFA application. Custody determinations should be made on a case-by-case basis utilizing existing custody determination guidelines and the guidance found in the December 22, 1998, memorandum signed by the Executive Associate Commissioner, Office of Field Operations. The Service completes a Form I-290(c) in order to certify the denial of HRIFA benefits to the Immigration Court. The court then determines whether HRIFA adjustment was properly denied.

The filing of an application automatically held the removal of the alien in abeyance. If an alien was a mandatory detention case, the filing of the application did not affect the aliens custody. Additional information about HRIFA rules may be found in Section 902 of the HRIFA and 8 CFR 245.15. If questions arise involving HRIFA applicants, consult the District Counsels office or the Examinations branch.

20.12 Voluntary Departure.

Voluntary departure may be granted by the INS or an immigration judge under the conditions specified in section 240B of the Immigration and Nationality Act. See Chapter 13 of this Manual for an explanation of voluntary departure.

(b)(6), (b)(7)(C)
[Redacted]
From: [Redacted] on behalf of DRO Taskings

Sent: Wednesday, July 21, 2010 11:16 AM

To: [Redacted]

Cc: Loiselle, Mary F; [Redacted]

[Redacted] DRO Taskings

Subject: Re: New task from HQOCR: 47368 - Language Access Briefing with EAD Chaparro and Rep. Judy Chu - 47368 FolderID 47368

Attachments: TranslationTalkingPoints071610_3.docx; QFRanswersLanguage071210_v1.docx; APAC Countries Results 07 16 2010.xlsx; Foreign Language.pdf

Mr. [Redacted]

The attached documents have been cleared by the Deputy's Chief of Staff [Redacted]

Thank you,

(b)(6), (b)(7)(C)
[Redacted]
Taskings and Correspondence Unit
Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations
500 12th Street SW | Washington D.C. 20024
202-732-[Redacted] Office | 202-905-[Redacted] Cellular

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From: iceocr@sp.ice.dhs.gov [mailto:iceocr@sp.ice.dhs.gov]

Sent: Friday, July 09, 2010 3:24 PM

To: DRO Taskings; [Redacted]

Subject: 10072013 | New task from HQOCR: 47368 - Language Access Briefing with EAD Chaparro and Rep. Judy Chu - 47368 FolderID 47368

Please do not reply to this e-mail. It is from an unmonitored system account. All action should occur within OESIMS.

ICE OFFICE OF CONGRESSIONAL RELATIONS TASKING

To: ERO, OAQ, Human Capital, ODPP (FYI)

Lead Program: ERO

* Lead program office must coordinate and consolidate all program office comments into one ICE response within the given time period, then upload into the Sharepoint OESIMS folder as the final draft. BECAUSE THIS IS FOR A SINGLE BRIEFER WORKING FROM ONE PRESENTATION, PLEASE COORDINATE RESPONSES WITH LEAD PROGRAM. THANK YOU!

From: Representative Judy Chu (D-CA)

Instructions:

Please provide responses to the following questions. All answers provided will be consolidated into a briefing document, so please provide data in a format that can be easily shared and combined, e.g. Word, Excel, Powerpoint, etc., rather than PDFs or paper copies.

1. **ERO, with ODPP Assistance as needed:** Please identify each standard within the 2010 draft revised Performance-Based National Detention Standards that provides detainees additional language access and briefly summarize the changes made in each such standard to allow greater language access.
2. **ERO:** Please provide a narrative response a briefer can provide estimating what portion of the detainee population is not sufficiently proficient in English to obtain regular medical treatment or assist in their own legal defense without the aid of interpreters.
3. **ERO:** Please explain how ERO uses translation services at present.
4. **ERO:** Please explain how ERO intends to use translation services in the future.
5. **OAQ:** Please provide available data related to translation services contracts, such as performance measures used by ICE, hours billed and languages for which translation was provided, data on use of contracted services and how much ICE spends on translation services.
6. **ERO, Human Capital:** Please explain incentives offered to hire individuals who speak languages other than English, particularly Asian or Pacific Island languages.
7. **ERO, Human Capital:** Please explain incentives provided to ERO personnel who speak Asian languages.
8. **ERO:** Please identify specific process points from encounter through detention where a speaker of a language other than English or Spanish can self-identify and receive additional assistance in their native language.
9. **ERO:** Please provide information on how Asian or Pacific Islander detainees can receive information in their native language at book-in, orientation, sick call, during legal orientation briefings and related to visitation.
10. **ERO:** What can ICE do to increase awareness and usage of translation call-in service?
11. **ERO:** Generally speaking, what costs and productivity losses would be associated with a regularly updated system-wide survey of languages spoken by detainees who are not proficient in English?
 - a. What costs and productivity losses would be associated with identifying the top five languages spoken at each facility?
12. **ERO:** What steps has ICE taken since 2008 to facilitate family or interpreter involvement in medical visits?
13. **ERO:** Please explain current rules on when and why family members or interpreters can and cannot be present for on- and off-site medical visits and visits with legal assistance providers.
14. **ERO:** Can ERO make visits for interpreters and family members who would translate for detainees less cumbersome? Can more contact be allowed during such visits?
15. **ERO:** Can interpreters visit detainees without attorneys or legal representatives? If so, how?
16. **ERO:** Of total detainees during fiscal year 2009 and fiscal year-to-date 2010, how many detainees identify as having a specific Asian or Pacific Island country of origin at book-in? (NOTE: country list below)

EXAMPLE

FY09	Total	Percentage of Total
Detainees	[Number]	100%
Asian or Pacific Island Country of Origin Detainees	[Number]	X%

FY10 to date	Total	Percentage of Total
Detainees	[Number]	100%

2010FOIA0052 001225

Asian or Pacific Island Country of Origin Detainees	[Number]	X%
--	----------	----

- a. For FY 2009 and FY2010 to date, provide numbers of detainees and percentages of total detainee population for each Asian or Pacific Island country.

EXAMPLE

FY09	Country Total	Percentage of Asian or Pacific Island Country of Origin Detainees Total	Percentage of Total Detainee Population
Country	[Number]	X%	X%
Country	[Number]	X%	X%
Country	[Number]	X%	X%
Country	[Number]	X%	X%
Country	[Number]	X%	X%
Country	[Number]	X%	X%

FY10-to-date	Country Total	Percentage of Asian or Pacific Island Country of Origin Detainees Total	Percentage of Total Detainee Population
Country	[Number]	X%	X%
Country	[Number]	X%	X%
Country	[Number]	X%	X%
Country	[Number]	X%	X%
Country	[Number]	X%	X%
Country	[Number]	X%	X%

- b. For each such country of origin identified,
- i. Please identify the top 5 facilities holding detainees from that country for FY2009 and FY2010 and their percentage of total detainee population in each such facility (if data does not reflect the U.S. state in which the facility is located, indicate state where facility is located);

EXAMPLE

FY09 [COUNTRY]	[Country] Total	Percentage of Facility Population from [Country]
Facility	[Number]	X%
Facility	[Number]	X%
Facility	[Number]	X%
Facility	[Number]	X%
Facility	[Number]	X%

FY10-to-date [COUNTRY]	[Country] Total	Percentage of Facility Population from [Country]
Facility	[Number]	X%
Facility	[Number]	X%
Facility	[Number]	X%
Facility	[Number]	X%
Facility	[Number]	X%

Please use the following countries of origin as Asian or Pacific Island countries:

Afghanistan
Australia
Bangladesh
Bhutan
Brunei
Burma
Cambodia
China
Fiji
Hong Kong
India
Indonesia
Japan
Kazakhstan
Kiribati
Korea, North
Korea, South
Kyrgyzstan
Laos
Macau
Malaysia
Maldives
Marshall Islands
Micronesia, Federated States of
Mongolia
Nauru
Nepal
New Zealand
Pakistan
Palau
Papua New Guinea
Philippines
Samoa
Singapore
Solomon Islands
Sri Lanka
Taiwan
Tajikistan
Thailand
Timor-Leste (East Timor)
Tonga
Turkmenistan
Tuvalu
Uzbekistan
Vanuatu
Vietnam

Cleared By: _____

Tele-(xxx) xxx-xxxx

Background:

2010FOIA6052.001227

7/20/2010

Representative Judy Chu (D-CA) has requested a briefing from ICE on language access issues, particularly as relevant to Asian language speakers. She is expected to ask pointed and detailed questions during this briefing. Briefer will be Executive Associate Director James Chaparro. Materials and information requested are for discussion and presentation during briefing with the Congresswoman.

Attached Documents:

- Language Access Letter from Rep. Judy Chu dated May 26, 2010;
- Outgoing ICE response to Chu letter of May 26, 2010;

Tasking Program Office POC Information:

(b)(6)
Congressional Liaison Specialist
Office of Congressional Relations
U.S. Immigration and Customs Enforcement
500 12th Street, S.W.
Washington, D.C.
Direct: (202) 732- (b)(7)(C)
Original Message: (b)(6)

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Folder Subject: 47368 - Language Access Briefing with EAD Chaparro and Rep. Judy Chu - 47368
Folder Originator: Hon. Judy Chu
Workflow ID: 6aa575aa-24ef-4b49-a0a3-e1141118744c
Folder Location: (b)(7)(E)
Task ID: 242747
Workflow Task ID: 8882258f-a533-4b7f-9476-2cf6ad82a54f
Assignment ID: 41fd6063-2273-453f-a6fd-77d8a412530c

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U.S. Immigration and Customs Enforcement

ICE Translation and Interpretation Services Talking Points

July 16, 2010

ISSUE

Representative Chu has asked some questions about ICE translation and interpretation services. ERO will have the opportunity to respond to these questions.

BACKGROUND:

The Office of Enforcement and Removal (ERO), Immigration and Customs Enforcement (ICE) is responsible for providing adequate and appropriate custody management to support removals of illegal aliens. Part of this responsibility is to ensure that facilities utilized by ICE to house detained aliens maintain appropriate conditions of confinement in accordance with the ICE National Detention Standards (NDS) and the new Performance Based National Detention Standards (PBNDS). These standards were implemented to facilitate consistent conditions of confinement, access to legal representation, and safe, secure, and humane operations across the immigration detention system.

In support of this mission, ICE has implemented various mechanisms to provide detained aliens with appropriate translation and interpretation services consistent with the NDS and PBNDS requirements.

TALKING POINTS:

ICE contracted language services

Currently ICE has established an interagency agreement with the Citizenship and Immigration Services (CIS) to provide translation services through CIS's Language Service Section (LSS). This service provides the following:

- Face-to-face translation services
- Telephonic interpreting (simultaneously or consecutive)
- Document translation
- Audio transcribing/translating

ICE has also established language contract service with Language Services Associates, Inc (LSA). LSA provides comprehensive telephonic interpretation services.

During Office of Executive Office of Immigration Review (EOIR) court proceedings translations services are provided at no cost to detainees.



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National Detention Standards

Each of the standards in the 2010 PBNDS requires that accommodations be made for aliens who speak different languages. This will allow greater language access for detainees in ICE custody.

Each standard has the following language:

The applicable content and procedures in this standard shall be communicated to the detainee in a language or manner that the detainee can understand.

All written materials provided to detainees shall generally be translated into Spanish. Where practicable, provisions for written translation shall be made for other significant segments of the population with limited English proficiency.

Oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate.

To maintain consistency with written policies and procedures, the detention standards also ensure that facility staff, contractors, and volunteers are competent in their assigned duties by requiring that they receive initial and ongoing training. They receive cultural diversity and communication skills training for understanding staff and detainees, thus strengthening the ability for staff to provide services to a culturally diverse detainee population.

Language services during book-in.

Upon book-in, if the officer determines that the detainee is not proficient in English they will utilize the ERO language services that are available. The National Detention Standards requires a facility's policies and procedures be communicated to all detainees in a language they are able to understand. This includes but is not limited to orientation, sick call, legal matters, and facility disciplinary policy.

BE CAREFUL IF ASKED

Question: How ERO uses translation services?

Answer: Immigration and Customs Enforcement (ICE) agents/officers use the languages services to effectively communicate with detainees at various stages of the detention process. When it is determined that there is an individual in ICE custody with limited English proficiency, ICE officers are instructed to obtain assistance from another officer who is fluent in the specific language or utilize the contracted language services. ICE employees and contractors have the



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ability to contact multiple language services to assist in communicating and translating to detainees within the detention system. Usually, contact is made with the language service via speaker phone in the presence of both the officer and the detainee and the interpreter performs direct translation services in order for both parties to understand each other.

The specific contracted language service provider offers various services such as face-to-face and telephonic interpreting, document translation, and audio transcribing/translating in various languages and dialects. Handwritten requests by detainees for interpreters may also be faxed for translation should the need arise and therefore ICE makes every attempt to effectively communicate in the native language of the non-English speaking detainee.

Question: How do Asian or Pacific Islander detainees with LEP receive information at book-in, orientation, sick call, during legal orientation briefings and related to visitation?

Answer: Upon book-in, if the officer determines that the detainee is not proficient in English they will utilize the ERO language services that are available. The National Detention Standards requires a facility's policies and procedures be communicated to all detainees in a language they are able to understand. This includes but is not limited to orientation, sick call, legal matters, and facility disciplinary policy.

Question: What can ICE do to increase awareness and usage of translation call-in service?

Answer: ICE has periodically reinforced the availability of translation services via official bulletins sent out to each Field Office Director. ICE recognizes that with the dynamic nature of the detainee population and changes in facilities authorized for use, continual communication to the field components must take place to utilize call-in services most effectively.

Question: What are the rules on when and why family members or interpreters can and cannot be present for on- and off-site medical visits and visits with legal assistance providers?

Answer: ICE is responsible for the health and safety of everyone within its custody and as such, national standards regarding facility operations have been established. ICE must balance access and security coupled with efficient operations. If non-detained family members and friends were allowed within a detention setting it would present an unsafe environment for detainees, officers, family members and friends as well as create an extreme burden on facility security operations. Due to security as well facility protocol non-detained personnel are not allowed accompany detainees during off-site medical visits.

All visits are welcome at detention facilities, nevertheless all visitors must conform to the rules of that specific facility. There is no specific restriction for attorneys on a legal visit or other legal



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providers to bring an interpreter and therefore ICE encourages attorneys to provide interpreters during their visits.

Question: Can ERO make visitations less cumbersome and allow more contact during such visits?

Answer: All visits must conform to the rules of the specific detention facility. The detainees can visit with family and friends and/or an interpreter if they so desire. The rules for visitation are as streamlined as safety and security and the orderly running of the facility will allow. Contact visitations will be conducted in accordance with the facility's rules and regulations.

Question: Does every facility have 24/7 access to interpreter services?

Answer: ICE has also established language contract service with Language Services Associates, Inc (LSA). LSA provides comprehensive telephonic interpretation services to ERO 24/7.



**U.S. Immigration
and Customs
Enforcement**

ICE Translation and Interpretation Services Responses to Get Backs

1. Please identify each standard within the 2010 draft revised Performance-Based National Detention Standards that provides detainees additional language access and briefly summarize the changes made in each such standard to allow greater language access

Response: Each of the standards in the 2010 PBNDS requires that accommodations be made for aliens who speak different languages. This will allow greater language access for detainees in ICE custody.

Each standard has the following language:

The applicable content and procedures in this standard shall be communicated to the detainee in a language or manner that the detainee can understand.

All written materials provided to detainees shall generally be translated into Spanish. Where practicable, provisions for written translation shall be made for other significant segments of the population with limited English proficiency.

Oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate.

2. Please provide a narrative response, a briefer can provide estimating on what portion of the detainee population is not sufficiently proficient in English to obtain regular medical treatment or assist in their own legal defense without the aid of interpreters.

Response: ICE does not track the number of detainees who require interpreters. We may be able to provide the number of detainees that utilize the contract translation services but this number would not necessarily include detainees whose needs are met in other ways such as with the assistance of ICE bi-lingual staff.

3. Please explain how ERO uses translation services at present.

Response: Immigration and Customs Enforcement (ICE) agents/officers utilize translation services to effectively communicate with detainees throughout the various stages of the detention process. When it is determined that there is an individual in ICE custody with limited English proficiency, ICE officers are instructed to obtain assistance from another officer who is fluent in the specific language or utilize the contracted language services. ICE employees and contractors have the ability to contact multiple language services to assist in communicating and translating to detainees within the detention system. Usually, contact is made with the language service via

speaker phone in the presence of both the officer and the detainee and the interpreter performs direct translation services in order for both parties to understand each other.

The specific contracted language service provider offers various language services such as face-to-face and telephonic interpreting, document translation, and audio transcribing/translating in multiple languages and dialects. Handwritten requests by detainees for interpreters may also be faxed for translation should the need arise and therefore ICE makes every attempt to effectively communicate in the native language of the non-English speaking detainee.

4. Please explain how ERO intends to use translation services in the future.

Response: ICE is committed to ensuring all detainees in custody have the ability to understand the detention process and to provide excellent care to all ICE detainees. ICE also recognizes that excellent care includes effective communication between staff and detainee, and therefore ICE intends to expand language services while focusing on communicating more effectively to its field components regarding existing language services. ICE will also continue to aggressively recruit officers with diverse foreign language skills. Further, ICE will assertively monitor contracted jails to ensure all detention standards are complied with including effective communication with detainees in a language or manner in which they can understand.

5. Please explain incentives offered to hire individuals who speak languages other than English, particularly Asian or Pacific Island languages.

Response: Presently, ERO has not experienced the need to offer hiring incentives to recruit individuals who speak languages other than English.

6. Please explain incentives provided to ERO personnel who speak Asian languages.

Response: Current ERO law enforcement personnel, who speak Asian languages and languages other than English, are eligible to apply for and have received the Foreign Language Proficiency Award (see attached ICE Policy Directive 1-9.0, Foreign Language Proficiency Awards for Non-Bargaining ICE Law Enforcement Officers).

7. Please identify specific process points from encounter through detention where a speaker of a language other than English or Spanish can self-identify and receive additional assistance in their native language.

Response: Administratively arrested aliens who do not speak English or Spanish can identify their need for interpretation assistance at any point in the removal process from encounter until removal or release from custody. Interpretation services are available to DHS employees and these services are used from the initial contact throughout the entire removal process. Individuals, who are criminally arrested by ICE Officers, are also able to express their need for interpretation services at any time from arrest until they are released from custody.

8. Please provide information on how Asian or Pacific Islander detainees can receive information in their native language at book-in, orientation, sick call, during legal orientation briefings and related to visitation.

Response: Upon book-in, if the officer determines that the detainee is not proficient in English they will utilize the ERO language services that are available. The National Detention Standards requires detention facilities to communicate to all detainees in a language they are able to understand the policies and procedures of that facility. This includes but is not limited to orientation, sick call, legal matters, and facility disciplinary policy.

Additionally, all personnel in the Division of Immigration Health Services (DIHS) have access to interpreter services. DIHS currently translates its patient education documents into the following languages:

- Arabic (Modern Standard)
- Chinese (Simplified)
- Chinese (Traditional)
- Farsi
- French
- Haitian Creole
- Polish
- Portuguese
- Russian
- Somali
- Urdu
- Vietnamese
- Spanish
- Chaldean
- K'iche
- Tigrinya
- Sri Lanka Tamil

9. What can ICE do to increase awareness and usage of translation call-in service?

Response: ICE has periodically reinforced the availability of translation services via official bulletins sent out to each Field Office Director. ICE recognizes that with the dynamic nature of the detainee population and changes in facilities authorized for use, continual communication to the field components must take place to utilize call-in services most effectively.

10. Generally speaking, what costs and productivity losses would be associated with a regularly updated system-wide survey of languages spoken by detainees who are not proficient in English?

- a. What costs and productivity losses would be associated with identifying the top five languages spoken at each facility?

Response: One any given day, ICE uses approximately 250 authorized detention facilities that range in average daily population from under 10 to over 1000. ICE would need to conduct a facility by facility survey to estimate this cost and lost productivity.

11. What steps has ICE taken since 2008 to facilitate family or interpreter involvement in medical visits?

Response: Refer to the response for 8 and 12.

12. Please explain current rules on when and why family members or interpreters can and cannot be present for on- and off-site medical visits and visits with legal assistance providers.

Response: ICE is responsible for the health and safety of everyone within its custody and as such, national standards regarding facility operations have been established. ICE must balance access and security coupled with efficient operations. If non-detained family members and friends were allowed within a detention setting it would present an unsafe environment for detainees, officers, family members and friends as well as create an extreme burden on facility security operations. Due to security as well facility protocol non-detained personnel are not allowed accompany detainees during off-site medical visits.

All visits are welcome at detention facilities, nevertheless all visitors must conform to the rules of that specific facility. There is no specific restriction for attorneys on a legal visit or other legal providers to bring an interpreter and therefore ICE encourages attorneys to provide interpreters during their visits.

13. Can ERO make visits for interpreters and family members who would translate for detainees less cumbersome? Can more contact be allowed during such visits?

Response: All visits must conform to the rules of the specific detention facility. The detainees can visit with family and friends and/or an interpreter if they so desire. The rules for visitation are as streamlined as safety and security and the orderly running of the facility will allow. Contact visitations will be conducted in accordance with the facility's rules and regulations.

14. Can interpreters visit detainees without attorneys or legal representatives? If so, how?

Response: Interpreters are subject to the same rules and regulations provided by the facility on visitation. All visits must conform to the rules of the facility. The detainees can visit with family and friends and/or an interpreter if they so desire.

15. Of total detainees during fiscal year 2009 and fiscal year-to-date 2010, how many detainees identify as having a specific Asian or Pacific Island country of origin at book-in? (NOTE: country list below)

Response: See attached spread sheet.

ERO Detention Management Division

Language Access Briefing with EAD Chaparro and Rep. Judy Chu

Of total detainees during fiscal year 2009 and fiscal year-to-date 2010, how many detainees identify as having a specific Asian or Pacific Island country of origin at book-in?

FY09	Total (ADP)	Percentage of Total
Detainees	32,535	100%
Asian or Pacific Island Country of Origin Detainees	2,535	7.8%

FY10 to date	Total	Percentage of Total
Detainees	30,929	100%
Asian or Pacific Island Country of Origin Detainees	2,161	7.0%

Source: ICE Integrated Decision Support (IIDS), 7/13/2010.

IIDS is a data warehouse that contains dynamic data extracts from the Enforcement Integrated Database (EID).

All data is updated based on most current data available (IIDS as of 11/11/2009; EID extract as of 11/09/2009).

Average Daily Population (ADP) - Billable Mandays are based on BILLABLE DAYS. A BILLABLE DAY is analogous to the way hotels charge for use of their rooms. If a SUBJECT enters a detention facility and stays for any amount of time, that is counted as a BILLABLE DAY. If the SUBJECT stays more than one day, the last day that the subject leaves is not counted as a BILLABLE DAY. If a person is booked and released to more than one DRO facility in the same day, each of those BOOKINGS (admission into a facility) will count as a new BILLABLE DAY. The ADP is the number of mandays for a given time period, divided by the number of days in that time period.

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ICE Policy System**

OFFICE OF PRIMARY INTEREST: OFFICE OF HUMAN CAPITAL

DISTRIBUTION:	ICE
DIRECTIVE NO.:	1-9.0
ISSUE DATE:	July 25, 2007
EFFECTIVE DATE:	January 1, 2008
REVIEW DATE:	January 1, 2011
SUPERSEDES:	See Section 3 below.

**DIRECTIVE TITLE: Foreign Language Proficiency Awards for Non-Bargaining ICE
Law Enforcement Officers**

1. **PURPOSE and SCOPE.** This Directive establishes policy and procedures for paying cash awards to U.S. Immigration and Customs Enforcement (ICE) law enforcement officers (LEOs) who are proficient in and utilize a foreign language in the performance of their official duties.
2. **AUTHORITIES/REFERENCES.**
 - 2.1. 5 U.S.C. Section 4521, Definition.
 - 2.2. 5 U.S.C. Section 4522, General Provision.
 - 2.3. 5 U.S.C. Section 4523, Award Authority.
 - 2.4. 5 U.S.C. Section 5305, Federal Law Enforcement Pay Reform Act of 1990, Section 404.
3. **SUPERSEDED/CANCELLED POLICY/SUMMARY OF CHANGES.** This Directive supersedes previously recognized processes and guidance issued by ICE Program Offices regarding the payment of foreign language proficiency awards for LEOs. It is the originating and establishing Directive for ICE policy regarding payment of cash awards to LEOs who utilize a foreign language in the performance of their official duties. Effective with this policy, all current and previous policies on this matter are hereby rescinded and replaced by this centralized ICE Directive.
4. **BACKGROUND.** ICE's mission requires that LEOs interact with persons who speak languages other than English in conducting investigations and interviews. ICE LEOs who are proficient in one or more foreign languages may be required to utilize their foreign language skills in the performance of their official duties. 5 U.S.C. Section 4523 authorizes Federal agencies to compensate their LEOs for this ability.
5. **DEFINITIONS.** The following definitions are provided for the purposes of this Directive:

DIRECTIVE: Foreign Language Proficiency Awards for ICE Law Enforcement Officers

- 5.1. Basic Pay:** The rate of pay fixed by law for the position held by an employee before deductions and exclusive of additional pay of any kind. Basic pay does not include the following:
 - 1) Interim geographic adjustments;
 - 2) Special pay adjustments for law enforcement officers in selected cities under section 404 of the Federal Enforcement Pay Reform Act of 1990, 5 U.S.C. Section 5305;
 - 3) Premium pay, which includes law enforcement availability pay, administratively uncontrollable overtime, night differential, Sunday pay, holiday pay, and overtime pay;
 - 4) Post differentials; or
 - 5) Cost of living allowances.
- 5.2. The Cash Award** is a discretionary award that is in addition to basic pay and does not increase an employee's base salary for purposes of retirement or life insurance. The cash award is considered taxable income. Payment of the award is subject to availability of funds.
- 5.3. Foreign Language:** A language other than English.
- 5.4. ICE Principal Field Officers (PFOs)** are the Office of Investigations Special Agents in Charge (SACs), ICE Attachés, the Senior ICE Representative (SIR) Frankfurt, and the SIR Hong Kong; Office of Professional Responsibility SACs; Detention and Removal Operations Field Office Directors; Federal Protective Service Regional Directors; Field Intelligence Unit Directors; and other officials as designated in writing by the ICE Assistant Secretary.
- 5.5. ICE Principal Headquarters Officers (PHOs)** are the Program Office Directors, Assistant Directors, and Deputy Assistant Directors.
- 5.6. Law Enforcement Officer (LEO):** Any employee within the meaning of 5 U.S.C. Section 8331(20) (Civil Service Retirement System law enforcement definition) or 5 U.S.C. Section 8401(17) (Federal Employees Retirement System law enforcement definition), also known as 6(c) and 12(d) retirement, respectively.
- 5.7. Official Duties** include, but are not limited to, teaching, translating, interpreting, surveillance monitoring, or speaking in the performance of investigative, protective, training, and/or official public relations work concerning ICE. Hours spent learning a foreign language or attending class as a student do not count as official usage to qualify for this award.

5.8. Proficiency in a Foreign Language: The level of proficiency using tests based on the Federal Interagency Language Roundtable level description system is specified below:

- S2** Limited Working Proficiency
- S2+** Limited Working Proficiency plus
- S3** General Professional Proficiency
- S3+** General Professional Proficiency plus
- S4** Advanced Professional Proficiency
- S4+** Advance Professional Proficiency plus
- S5** Functional Native Proficiency

5.9. Rate of Basic Pay: The following forms of compensation are included in the definition of "rate of basic pay":

- 1) Higher minimum rates of pay (applies to GS-3 through GS-10 only) for LEOs, effective January 1992 and authorized in section 403 of the Federal Employees Comparability Act of 1990; and
- 2) Special salary rates authorized by the Office of Personnel Management under the provisions of the Federal Enforcement Pay Reform Act of 1990 (5 U.S.C. Section 5305), with the exception of section 404 of 5 U.S.C. Section 5305. (See Section 5.1.3.)

5.10. Substantial Use: The number of hours of usage in the performance of official duties. ICE defines minimum substantial use as at least 10 percent of a basic work schedule (equivalent to at least 208 hours annually).

6. POLICY.

- 6.1.** ICE may award an annual cash award of up to 5 percent of basic pay to law enforcement officers (LEOs) for demonstrated proficiency and substantial use of one or more foreign languages in the performance of their official duties. No LEO may receive foreign language award amounts exceeding 5 percent of basic pay in any calendar year.
- 6.2.** Law enforcement officers must be full-time employees and must have achieved at least a "pass" or "fully successful" rating on the most recent performance appraisal in order to be eligible for a foreign language proficiency award.

7. RESPONSIBILITIES.

- 7.1.** Principal Headquarters Officers are responsible for determining whether funds are available to pay foreign language awards.
- 7.2.** Supervisors are responsible for certifying that the required minimum levels of foreign language hours are recorded and documented.

DIRECTIVE: Foreign Language Proficiency Awards for ICE Law Enforcement Officers

7.3. Law Enforcement Officers (LEOs) are responsible for:

- 1) Making a reasonable determination, after reviewing the proficiency criteria, that they possess foreign language skills that meet at least the minimum proficiency levels, and that they use, or expect to use, the foreign language(s) in the performance of their official duties for the minimum amount of time required;**
- 2) Ensuring that all forms are accurately completed and submitted on a timely basis; and**
- 3) Applying for proficiency testing and for documenting their use of one or more foreign languages.**

7.4. Program Office Field Training Program Managers (FTPMs) are responsible for coordinating testing activity within their Program Offices.

7.5. A representative from the Office of Investigations' Office of International Affairs will coordinate testing activity for foreign offices.

7.6. Program Offices' respective Mission Support Divisions are responsible for scheduling and documenting test scores for their respective Program Office.

8. PROCEDURES.

8.1. Application: All applicants must be tested in the foreign language(s) for which they claim proficiency. Applicants must submit a written application requesting to be tested that includes the applicant's name, Social Security Number (SSN), credential number, language(s) in which the applicant claims proficiency, and a statement that the language(s) is (are) used during at least 10 percent of the basic work schedule and during the performance of their official duties. The "Foreign Language Testing Application" must be signed by both the employee and the supervisor and must be submitted through the appropriate chain of command to the respective Program Office's FTPM. The FTPM will maintain the application for one year and will forward the information as required by their Program Office.

8.2. Testing Requirements.

- 1) Each Program Office will pay the cost of the initial test for any foreign language, any validation or retest, and recertification testing as noted below. Employees who do not reach the minimum score of S2 on the initial test may apply through their chain of command for retesting after 1 year. PHOs and PFOs will make retesting determinations on a case-by-case basis, considering the following factors:**

- Availability of funds;**

- Information provided which indicates why there is a greater expectation of passing the test; and
 - The expectation that the foreign language(s) will be used during at least 10 percent of the basic work week.
- 2) Employees who request testing but did not take the test or did not cancel during the 24-hour period prior to the test will not be allowed to request retesting for 1 year from the previous scheduled test date. The employee's PFO or PHO will consider exceptions to this rule on a case-by-case basis.
 - 3) Proficiency tests will be administered as close as possible to the employee's basic work week based on Eastern standard time at a government work site. Management will establish appropriate means to verify and document the identity of the employee tested.
 - 4) Program Offices will coordinate the testing of prospective participants either through a contractor or in house, as appropriate.

8.3. Certification and Recertification Procedures.

- 1) Program Office Mission Support Divisions will maintain original proficiency scores. The Mission Support Divisions will send copies of proficiency scores to the PHOs and the FTPMs for further dissemination through the chain of command to the employee. FTPMs must maintain a copy of the proficiency scores and employees must present a copy to their new FTPM upon permanent change of station or extended TDY of 12 months or more.
- 2) Employees must recertify their language proficiency every 5 years for S2 through S3+. The employee's Program Office will pay for recertification tests. Recertification will not be required for S4 and above.

8.4. Reporting Procedures.

- 1) Program Office Mission Support Divisions will maintain information on foreign language award payments. This information will include the total number of employees paid, total expenditures, and a summary of percentages paid, including the number of employees at each percentage level.
- 2) Each employee certified in one or more foreign languages is required to complete the Foreign Language Reporting Form on a monthly basis until the minimum requirement of 208 hours of substantial use of a foreign language has been met. The supervisor shall certify that the information provided is accurate.
- 3) Employees shall record hours of usage per day in increments of 1 hour. Credit will not be given for increments of less than 1 hour.

- 4) Annually, by January 31, employees must complete, and supervisors must sign and submit all Foreign Language Reporting Forms for the prior year through the chain of command to the Program Office's FTPM.
- 5) After the minimum requirement of 208 hours of foreign language usage has been met, the language proficiency score will provide the basis for determining the actual award amount. Awards are based on a calendar year.
- 6) Award computations resulting in fractions of a dollar will be rounded up to the next whole dollar amount.
- 7) Annually, by February 15, PHOs and PFOs will submit a memorandum to their Program Office's Mission Support Division which lists the following for each individual who qualifies for an award:
 - Employee name;
 - SSN;
 - Rate of basic pay;
 - Foreign language(s) used;
 - Percentage of salary for the award (3, 4, or 5 percent);
 - Number of employees qualifying in each foreign language; and
 - Dollar amount of the awards.

8.5. Payment Procedures.

- 1) Principal Headquarters Officers or designees will determine if funds are available to pay the awards. If funding is not available to pay the total amount, prorated amounts may be paid based on available funds.
- 2) Mission Support Divisions will provide the list of employees who are eligible for payment to the budget office within their respective Program Office.
- 3) Program Offices' budget offices will initiate payment of the awards.
- 4) The payment of cash awards will be made during the next calendar year that the award is earned. Note: All foreign language awards are subject to the availability of funds. The rate of awards is as follows:

DIRECTIVE: Foreign Language Proficiency Awards for ICE Law Enforcement Officers

<u>Proficiency Rating</u>	<u>Percentage of Basic Pay</u>
S2+	= 3%
S3/S3+	= 4%
S4 and above	= 5%

- 5) Awards will be paid on an annual basis, covering the previous calendar year. **Note:** No employee will receive an award on a retroactive basis prior to testing and certification. Awards will be computed at the salary rate of the permanent position of record in effect during the last pay period of the calendar year in which the foreign language(s) was used and certified. Awards shall not be computed on the basis of temporary promotions.
- 6) Awards for incidents of superior accomplishment which are enhanced by "one-time" or short-term use of a foreign language shall be made through the ICE awards program.

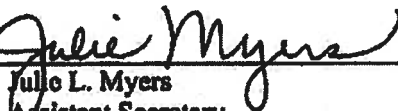
9. ATTACHMENTS.

9.1. Foreign Language Testing Application.

9.2. Foreign Language Reporting Document.

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



Julie L. Myers

Assistant Secretary

U.S. Immigration and Customs Enforcement

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

FOREIGN LANGUAGE TESTING APPLICATION

Last Name: _____

First Name: _____

Social Security Number: _____

Credential Number: _____

Date of Birth: _____

Position: _____

Office Phone Number: (_____) _____ Ext. _____

E-Mail Address: _____

Language to be tested: _____

I would like to be tested in the foreign language specified above. I certify that there is a reasonable expectation that I will use the foreign language during at least 10 percent of my basic work schedule.

Signature: _____ Date: _____
(Employee)

I acknowledge receipt of the above applicant's testing application.

Supervisor's Name: _____

Title: _____

Signature: _____ Date: _____

Privacy Act Notice: The Privacy Act of 1974 (5 U.S.C. § 552a) requires that the following notice be provide to you: The authority for collecting the requested information from ad about you is 5 U.S.C. § 4823 and 25 U.S. C. § 6109. The primary use of this information is by management and your payroll office to record your interest in and eligibility for a cash award based on your foreign language abilities. Additional disclosures of this information may be: in the event of litigation, to the Department of Justice, courts, adjudicative bodies, counsel, or parties or witnesses to the litigation, if the disclosure is relevant and necessary to or parties or witnesses to the litigation, if the disclosure is relevant and necessary to the litigation; in the event that the information (either alone or with other information), indicates a potential violation of law, to the appropriate authority for action. The foreign language cash award program is voluntary and you are not required to provide your Social Security Number (SSN). However, if you wish to participate in the program, your SSN must be provided. Your SSN is necessary to verify your identity, properly credit any award for which you qualify, and ensure that your tax liability for any increased earnings is properly reported. Your SSN will not be provided to contractors administering any relevant foreign language testing.

ICE Form 30-005 (01/07)

From: [REDACTED] on behalf of DRO Taskings
Sent: Monday, July 12, 2010 6:01 PM
To: iceocr@sp.ice.dhs.gov
Cc: [REDACTED] Loiselle, Mary F; [REDACTED]
Subject: 10071005 | New task from HQOCR: 47231 - RFI - Civil Immigration Enforcement Priorities - 47231 FolderID 47231
Attachments: Civil Immigration Enforcement (71210).doc

The attached has been cleared by [REDACTED] Acting Chief of Staff.

Taskings & Correspondence Unit
 Enforcement and Removal Operations
 Immigration and Customs Enforcement
 U.S. Department of Homeland Security
 500 12th Street SW | Washington, DC 20024 | 202-732-[REDACTED]

~~Warning: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this report should be furnished to the media, either in written or verbal form.~~

From: iceocr@sp.ice.dhs.gov [mailto:iceocr@sp.ice.dhs.gov]
Sent: Thursday, July 01, 2010 5:25 PM
To: DRO Taskings; [REDACTED]
Subject: 10071005 | New task from HQOCR: 47231 - RFI - Civil Immigration Enforcement Priorities - 47231 FolderID 47231

Please do not reply to this e-mail. It is from an unmonitored system account. All action should occur within OESIMS.

ICE OCR TASKING

To: ERO

Lead Program: ERO

* Lead program office must coordinate and consolidate all program office comments into one ICE response within the given time period, then upload into the Sharepoint OESIMS folder as the final draft.

From: House Homeland Security Committee, Majority Staff

Instructions:

Please provide responses to the following questions.

The updated detention policy directs FODs to not spend detention resources on certain groups.

- Does ICE/ERO have a plan for the detainees who fit in the categories outlined in the priorities document? Is ICE going to release these detainees or place them into ATD? Is ERO coordinating

2010FOIA6052.001249

7/30/2010

with NGOs or family members to ensure care for these groups?

Regarding pregnant women:

- Are there any provisions for the fathers of the unborn children? Or fathers of young children?
- Under this guidance, will pregnant women still go through the removal process? In other words, does this updated policy create a loophole for pregnant women?

Cleared By: _____

Tele-(xxx) xxx-xxxx

Background:

Staff of the House Homeland Security Committee are seeking further information regarding the policies outlined in the Assistant Secretary's Memorandum of June 30, 2010, entitled "Civil Immigration Enforcement: Priorities for the Apprehension, Detention and Removal of Aliens."

Tasking Program Office POC Information:

(b)(6), (b)(7)(C)
 Congressional Liaison Specialist
 Office of Congressional Relations
 U.S. Immigration and Customs Enforcement
 500 12th Street, S.W.
 Washington, D.C.
 Direct: (202) 732- (b)(6), (b)(7)(C)
 Original Message: (b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C) [mailto:(b)(6), (b)(7)(C)]
Sent: Thursday, July 01, 2010 4:41 PM
To: (b)(6), (b)(7)(C)
Subject: RE: Civil Immigration Enforcement Priorities

The updated detention policy directs FODs to not spend detention resources on certain groups.

oes ICE/ERO have a plan for the detainees who fit in the categories outlined in the priorities document? Is ICE going to release these detainees or place them into ATD? Is ERO coordinating with NGOs or family members to ensure care for these groups?

Regarding pregnant women:

re there any provisions for the fathers of the unborn children? Or fathers of young children?

nder this guidance, will pregnant women still go through the removal process? In other words, does this updated policy create a loophole for pregnant women?

Thanks (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

 (b)(6), (b)(7)(C)
 Border, Maritime, and Global Counterterrorism
 House Committee on Homeland Security
 (202) 226- (b)(6), (b)(7)(C)

This message is part of an automated workflow, please do not change the text in the subject line when responding or forwarding the message.

Folder Subject: 47231 - RFI - Civil Immigration Enforcement Priorities - 47231

Folder Originator: House Homeland Security Committee

Workflow ID: 87106e8b-1158-44bc-b5b8-88031d099dba

Folder Location:

Task ID: 242111

Workflow Task ID: f8cb8e98-40e0-4071-a8dd-d81b74c193d0

Assignment ID: 18064619-b373-48fc-bed4-d3b0f13965b8

The updated detention policy directs FODs to not spend detention resources on certain groups.

- Does ICE/ERO have a plan for the detainees who fit in the categories outlined in the priorities document? Is ICE going to release these detainees or place them into ATD? Is ERO coordinating with NGOs or family members to ensure care for these groups?

While the recent civil enforcement policy guidance states that apprehension, detention, and removal resources should be prioritized to focus on those aliens who pose a danger to national security or public safety, those who are recent illegal entrants, and those who are fugitives or obstruct immigration controls, the guidance also provides that nothing in the guidance prohibits the apprehension, detention, and removal of other aliens as well. ICE will apply this guidance, in conjunction with existing guidelines regarding custody determinations which identify factors to consider when making those determinations (criminal history, propensity for violence, risk of flight, community ties, mental health, and medical factors) to make case-by-case detention decisions.

Regarding pregnant women:

- Are there any provisions for the fathers of the unborn children? Or fathers of young children? Special provisions have not been made for the fathers of unborn children; however, the policy directs field office directors, that absent extraordinary circumstances, they should not expend resources on aliens who are primary caregivers of children.
- Under this guidance, will pregnant women still go through the removal process? In other words, does this updated policy create a loophole for pregnant women? This policy does not create a loophole for pregnant women. Like other aliens, if a pregnant woman fell into one of the three priorities she may be placed in removal proceedings. Although, a pregnant woman may still be placed in removal proceedings, absent extraordinary circumstances she will not be held in detention during removal proceedings.

Deferred Action

From: [REDACTED]
Sent: Tuesday, July 27, 2010 8:37 AM
To: DRO Taskings
Cc: [REDACTED] Loisele, Mary F; [REDACTED]
Subject: RE: 10072077 | FW: URGENT REQUEST - HOUSE BUDGET FY 2011

Gracias!!!!

[REDACTED]
 UNIT CHIEF
 BUDGET FORMULATION AND STRATEGIC PLANNING UNIT
 OFFICE OF INVESTIGATIONS
 DHS/USICE
 PH:202.732 [REDACTED]
 UNCLASS: [REDACTED]
 SECURE [REDACTED]

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From: [REDACTED] On Behalf Of DRO Taskings
Sent: Monday, July 26, 2010 6:57 PM
To: [REDACTED]
Cc: [REDACTED] Loisele, Mary F; [REDACTED]
Subject: 10072077 | FW: URGENT REQUEST - HOUSE BUDGET FY 2011

The attached has been cleared by [REDACTED] Acting Chief of Staff.

<< File: Getbacks from House Appropriations on FY 2011 Budget.doc >>

[REDACTED]
 Taskings & Correspondence Unit
 Enforcement and Removal Operations
 Immigration and Customs Enforcement
 U.S. Department of Homeland Security
 500 12th Street SW | Washington, DC 20024 | 202-732 [REDACTED]

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From: [REDACTED]
Sent: Monday, July 26, 2010 4:44 PM

To: DRO Taskings; [REDACTED] #ICE OI Tasking; [REDACTED]
Cc: [REDACTED]
Subject: URGENT REQUEST - HOUSE BUDGET FY 2011

All,

Please excuse this rush and 'jammed' clearance request. The below questions came to me on Friday with a turnaround this afternoon.

I have worked with HSI Division 3 ([REDACTED]) and ERO rep [REDACTED] on the attached answer.

What I need is concurrence from HSI and DRO formally so I can push this and get it out. As stated below, the House is marking up the budget bill today and tomorrow and they need this information asap....

Thanks...please feel free to call me if you have any questions or concerns

<< File: Getbacks from House Appropriations on FY 2011 Budget.doc >>

[REDACTED]
UNIT CHIEF
BUDGET FORMULATION AND STRATEGIC PLANNING UNIT
OFFICE OF INVESTIGATIONS
DHS/USICE
PH:202.732 [REDACTED]
UNCLASS [REDACTED] @DHS.GOV
SECURE [REDACTED]

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From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Sent: Thu Jul 22 19:14:34 2010
Subject: FW: Bellingham WA ICE Worksite Enforcement

Chris- The HAC markup is on Tuesday. They are trying to get this information by Monday at the latest.

From: [REDACTED] [mailto:[REDACTED]]
Sent: Thursday, July 22, 2010 6:58 PM
To: [REDACTED]
Subject: Bellingham WA ICE Worksite Enforcement

It predates your time at ICE, but in early 2009 the agency granted "deferred action" status to a group of undocumented workers in Bellingham, WA, who worked for Yamamoto Industries (an engine manufacturing company). I think there were something like 26 workers who were put into "deferred action" status in order to have them testify as witnesses to the prosecution of the Yamamoto owners.

Can you please find out from OI the status of all of the former Yamamoto employees? And, most specifically, do any remain in the US in "deferred action" or some other (please identify which) status?

Thanks,

(b)(6), (b)(7)(C)
Professional Staff
Subcommittee on Homeland Security
House Committee on Appropriations
202-225 (b)(6), (b)(7)(C) (v)
202-225 (b)(6), (b)(7)(C) (f)



Getbacks from
House Appropria...

(b)(7)(C)
UNIT CHIEF
BUDGET FORMULATION AND STRATEGIC PLANNING UNIT
OFFICE OF INVESTIGATIONS
DHS/USICE
PH:202.732
UNCLASS: @DHS.GOV
SECURE

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From:
To:
Cc:
Sent: Thu Jul 22 19:14:34 2010
Subject: FW: Bellingham WA ICE Worksite Enforcement

The HAC markup is on Tuesday. They are trying to get this information by Monday at the latest.

From: [mailto:]
Sent: Thursday, July 22, 2010 6:58 PM
To:
Subject: Bellingham WA ICE Worksite Enforcement

It predates your time at ICE, but in early 2009 the agency granted "deferred action" status to a group of undocumented workers in Bellingham, WA, who worked for Yamamoto Industries (an engine manufacturing company). I think there were something like 26 workers who were put into "deferred action" status in order to have them testify as witnesses to the prosecution of the Yamamoto owners.

Can you please find out from OI the status of all of the former Yamamoto employees? And, most specifically, do any remain in the US in "deferred action" or some other (please identify which) status?

Thanks,

(b)(6), (b)(7)(C)

Professional Staff

Subcommittee on Homeland Security

House Committee on Appropriations

202-225- (b)(6), (b)(7)(C) (v)

202-225- (b)(6), (b)(7)(C) (f)

Getbacks from House Appropriations on FY 2011 Budget

Q: Can you please find out from OI the status of all of the former Yamamoto employees? And, most specifically, do any remain in the US in "deferred action" or some other (please identify which) status?

A: Below is a breakdown of those that were arrested and placed into removal proceedings. None of those placed into removal proceedings remain in the US due to deferred action.

9 have been removed or have voluntary departed from the United States

12 are pending immigration proceedings.

1 has appealed the immigration judge's decision to the Board of Immigration Appeals

6 have had final administrative removal orders issued

Getbacks from House Appropriations on FY 2011 Budget

Q: Can you please find out from OI the status of all of the former Yamamoto employees? And, most specifically, do any remain in the US in "deferred action" or some other (please identify which) status?

A: Below is a breakdown of those that were arrested and placed into removal proceedings. None of those placed into removal proceedings remain in the US due to deferred action.

9 have been removed or have voluntary departed from the United States

12 are pending immigration proceedings.

1 has appealed the immigration judge's decision to the Board of Immigration Appeals

6 have had final administrative removal orders issued

Deferred Action

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Monday, July 12, 2010 1:56 PM
To: DRO Taskings
Subject: Determination of Medical Services in COC for Deferred Action Request
Follow Up Flag: Follow up
Flag Status: Blue
Attachments: (b)(6), (b)(7)(C) Def Action .pdf

Please find attached deferred action request provided for (b)(6), (b)(7)(C). The subjects claim they will not be able to obtain the proper care in their country of citizenship if returned. Please evaluate.

Thank you,

(b)(6), (b)(7)(C)
 Deportation Officer/ATD
 Immigration and Customs Enforcement
 Philadelphia Field Office

(215) 656- (b)(6), (b)(7)(C) x (b)(6), (b)(7)(C) (D)
 (215) 783- (b)(6), (b)(7)(C) (C)
 (215) 656-7304 (F)



Non-Profit Legal and Social Services for Immigrants and Refugees
Representing Immigrants, Resettling Refugees, Reuniting Families

Steven A. Morley, Esq.
President

Judith Bernstein-Baker, Esq., MSW
Executive Director

VIA Hand Delivery

November 25, 2009

Mr. Thomas Decker
Field Office Director
United States Immigration and Customs Enforcement
Department of Homeland Security
1600 Callowhill St., 4th Floor
Philadelphia, PA 19130

RE:

[Redacted] (b)(6), (b)(7)(C)

Request for Deferred Action

Next Hearing Date: December 1, 2009

Dear Mr. Decker:

I represent Mrs. [Redacted] (b)(6), (b)(7)(C) and Mr. [Redacted] (b)(6), (b)(7)(C) in their immigration proceedings. Through this letter, I am requesting that Mrs. [Redacted] (b)(6), (b)(7)(C) and Mr. [Redacted] (b)(6), (b)(7)(C) be granted deferred action on humanitarian grounds.

Mrs. [Redacted] (b)(6), (b)(7)(C) and Mr. [Redacted] (b)(6), (b)(7)(C) hereinafter, the "Respondents") are citizens and nationals of Peru. They are currently in removal proceedings before Judge [Redacted] (b)(6), (b)(7)(C). Their next master calendar hearing is scheduled for December 1, 2009. [Redacted] (b)(6), (b)(7)(C) assistant counsel in the Office of Chief Counsel, currently has the file in this case.

There are numerous humanitarian factors in this case that weigh towards the grant of deferred action for the Respondents. This includes the Respondents' delicate medical condition; the existence of extensive immediate family who are U.S. Citizens or Lawful Permanent Residents and; their long residence in the United States.

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2010FOIA6032:001261

Under the withdrawn operations instructions for deferred action, the following are among the factors that may be considered by the District Director (See Memorandum to Regional Directors, District Directors, Chief Patrol Agents, Regional and District Counsel: Exercising Prosecutorial Discretion; Meissner, Comm., Memo, HQOPP 5014 (Nov. 17, 2000)):

- o Length of residence in the United States
- o Humanitarian concerns, including:
 - Medical conditions affecting the alien or the alien's family
 - Family ties in the United States
 - Ties to one's home country
 - Home country conditions
- o Whether the alien is eligible or is likely to become eligible for other relief
- o Community attention
- o Criminal history

Summary of Medical Condition

Mrs. (b)(6) (b)(7)(C) was diagnosed with Idiopathic Thrombocytopenic Purpura (hereinafter "ITP") or (b)(6) Evans Syndrome" in February 2007. (See Exhibit 6) ITP is a blood disorder and an autoimmune disease.

Evans Syndrome is a rare autoimmune disorder in which the body makes antibodies that destroy the red blood cells, platelets and white blood cells. The course of Evans syndrome varies by case. The patient may be symptomatic of whatever blood levels are down. If the red blood cells are down, the problems complained of may be weakness, fatigue, shortness of breath and the usual things associated with anemia. With low platelets, they are susceptible to bleeding and major bruising from minor bumps and cuts. A bump on the head could cause severe brain hemorrhage and death. With low white blood cells, the patient has increased susceptibility to infections and difficulty in fighting these infections. The patient may have problems with one, two or all three of these blood lines, at one time. (See Exhibit 10)

There is no cure for ITP. The prognosis with Evans syndrome is guarded. Some patients have episodes of major blood cell destruction followed by long remissions, while others have chronic problems with no remissions. It has been reported that patients with Evans syndrome have a greater tendency to develop other autoimmune disorders such as lupus and rheumatoid arthritis and there is a tendency to develop various malignancies. Careful monitoring of the patient by a qualified physician is very important. (See Exhibit 10)

Mrs. (b)(6) (b)(7)(C) is under the care of the Penn State Hershey Cancer Institute, division of Hematology/Oncology. Her treating physician at the hospital is Dr. (b)(6) (b)(7)(C). She has regular follow-up visits. These are essential in order to ensure that Mrs. (b)(6) (b)(7)(C) disease is monitored carefully and medications be adjusted as needed. Mrs. (b)(6) (b)(7)(C)

(b)(6), (b)(7)(C) next appointment with the Penn State Hershey Cancer Institute is scheduled for December 7, 2009. (See Exhibit 9)

Mr. (b)(6), (b)(7)(C) is HIV positive. Mr. (b)(6), (b)(7)(C) is under the care and supervision of the Kline Family Practice Center in Harrisburg, Pennsylvania. He is compliant with his medications and is under the regular care and supervision of a physician.

The deportation of the Respondents to Peru would be unconscionable as it would put their lives and the life of their child in danger. Mrs. (b)(6), (b)(7)(C) is under the close medical attention due to the rare disease she suffers from. Although her disease is under control there is no cure for the disease and there is no way to predict the course of the disease. The disruption of her regular medical care could result in severe and life threatening complications. Serious and possibly fatal complications due to poor medical control may include subarachnoid or intracerebral hemorrhage, lower gastrointestinal bleeding or other internal bleeding. An ITP patient is also vulnerable to major internal bleeding caused by any abdominal trauma, as might be experienced in a motor vehicle crash. Mrs. (b)(6), (b)(7)(C) was prescribed Rituxan for the care of her disease. This medication is currently unavailable in Peru. (See Exhibit 7)

Similarly, Mr. (b)(6), (b)(7)(C) medical condition would be severely affected if he were to be deported to Peru. Mr. (b)(6), (b)(7)(C) is compliant with his medications which he receives. He continues to receive treatment and medication for the disease and he receives counseling and support at the Clinic. The treatment has been effective and the services have helped Mr. (b)(6), (b)(7)(C) cope with this life-threatening illness. The availability of treatment for HIV in Peru is severely limited and extremely expensive. The average monthly costs for medications for HIV average \$1500 a month. State assistance in covering these medications is very limited. Even if Mr. (b)(6), (b)(7)(C) were able to enroll, something that is highly unlikely, the treatment offered is sporadic and in no way would meet the necessities to properly treat the disease. (See Exhibit 8)

Family Ties

Mrs. (b)(6), (b)(7)(C) and Mr. (b)(6), (b)(7)(C) have a six-year old son, (b)(6), (b)(7)(C) who was born on April 15, 2003 in the United States. (See Exhibit 1) (b)(6), (b)(7)(C) is currently in Kindergarten attending Mechanicsburg Area School District.

In addition to their son, the Respondents also have several other family members in the United States with lawful status. Mrs. (b)(6), (b)(7)(C) father is a Lawful Permanent Resident (See Exhibit 2); Mrs. (b)(6), (b)(7)(C) step-mother is a Lawful Permanent Resident (See Exhibit 3); Mrs. (b)(6), (b)(7)(C) brother is a U.S. Citizen who was naturalized while serving in Iraq (See Exhibit 4); Mrs. (b)(6), (b)(7)(C) sister is a Lawful Permanent Resident (See Exhibit 5); Finally, Mr. (b)(6), (b)(7)(C) has a brother who is a Lawful Permanent Resident. The Respondents' family provides important support.

The following numbered exhibits are submitted in support of this application:

Proof of Family Ties

1. Birth Certificate of [REDACTED] child of [REDACTED] and [REDACTED]
2. Copy of Permanent Resident Card of, [REDACTED] Mrs. [REDACTED] father;
3. Copy of Permanent Resident Card of, [REDACTED] Mrs. [REDACTED] step-mother;
4. Copy of Certificate of Naturalization of, [REDACTED], Mrs. [REDACTED] brother;
5. Copy of Permanent Resident Card of, [REDACTED] Mrs. [REDACTED] sister;

Proof of Medical Issues

6. Outpatient Note regarding [REDACTED] from Dr. [REDACTED] of the Penn State Hershey Medical Center;
7. Letter from Dr. [REDACTED] and English translation regarding Mrs. [REDACTED]
8. Letter from Dr. [REDACTED] and English translation regarding Mr. [REDACTED]
9. Appointment notice for Mrs. [REDACTED] indicating her follow-up appointment with Dr. [REDACTED] of the Penn State Hershey Cancer Institute;
10. Fact Sheet on Idiopathic Thrombocytopenic Purpura (ITP) issued by the NCH Healthcare System;

We ask that you exercise your discretion and grant Mrs. [REDACTED] and Mr. [REDACTED] deferred action. Their removal from the United States would greatly jeopardize their health. It would also cause great harm to the health and livelihood of their family. Please contact our office with any questions (215) 832-[REDACTED]

[REDACTED]
(b)(6), (b)(7)(C)
Attaching Affidavit

7

COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF HEALTH
Vital Records
Certification of Birth

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

b6, b7C

From: [REDACTED] b6, b7C @dhs.gov]
Sent: Tuesday, June 15, 2010 11:08 PM
To: [REDACTED] b6, b7C
Cc:
Subject: FW:

b6, b7C

Some of these need further refinement or qualification, and a couple are of greater concern. My concerns are flagged in red type below.

b5DP

And the first is a minor quibble.

b6, b7C, b5

b6, b7C

b6, b7C

Principal Deputy General Counsel
Department of Homeland Security
202-282- [REDACTED] (desk)
202-306- [REDACTED] (cell)

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From: [REDACTED] b6, b7C [mailto:[REDACTED] b6, b7C @dhs.gov]
Sent: Tuesday, June 15, 2010 8:36 PM
To: [REDACTED] b6, b7C
Subject: FW:

fyi

From: [REDACTED] b6, b7C [mailto:[REDACTED] b6, b7C @dhs.gov]
Sent: Tuesday, June 15, 2010 3:28 PM
To: [REDACTED] b6, b7C
Subject:

Some of the things in here are placeholders and to be discussed btw now and next wed, but here is what Im giving her for tomorrow's meeting. [REDACTED]

b5

b5

MEMO

TO: Secretary
FROM: [REDACTED]
RE: CIR Principals Meeting
DATE: 6/16/10

b6, b7C

This is your regular principals meeting on CIR. The discussion will center on [REDACTED]

b5DP

b5DP

2.

3.

4.

b5DP

5.

6.

b5DP

b5DP

b6, b7c

From: b6, b7c
Sent: Monday, April 05, 2010 4:11 PM
To: Morton, John; b6, b7c
Cc: b6, b7c
Subject: FW: SCR-APLD- b6, b7c
Attachments: SCR-APLD- b6, b7c (040110).doc; b6, b7c Press QA.doc

b6, b7c

Senior Counselor
202-732- b6, b7c (w)
202-590- b6, b7c (c)

From: b6, b7c
To: b6, b7c
Cc: b6, b7c
Sent: Mon Apr 05 15:36:50 2010
Subject: FW: SCR-APLD b6, b7c

Heads-up on this one, as it is coming up on the in St. Paul tomorrow.

b6, b7c a former ICE confidential informant (CI) against the Mexican drug cartels, has been the subject of congressional and media interest due to his former ICE CI status, during which he participated in one cartel's murder of its rivals and the disposal of their bodies.

He has been detained by ICE since April 2005.

We will work closely w/ OPLA, I just wanted to make sure that this was on OAS' radar screen.

b6, b7c

b6, b7c

Director, Detention & Removal Operations
U.S. Immigration & Customs Enforcement
Department of Homeland Security
(202) 732- b6, b7c
b6, @dhs.gov

From: b6, b7c
Sent: Monday, April 05, 2010 3:03 PM
To: b6, b7c b6, b7c
Cc: b6, b7c
Subject: FW: SCR-APLD-Ramirez-Peyro

b6, b7c

This case has been docketed in St. Paul tomorrow. We are going to see if his attorney wants the alien paroled out of custody. If so we will likely recommend going along with that, but we want to see if he has any additional security concerns with release, etc.

We should let OAS know before finalizing anything. I will let you know what the attorney says.

b6, b7c

Deputy Principal Legal Advisor
US Immigration and Customs Enforcement
202 732 5002

From:

b6, b7c

Sent: Thursday, April 01, 2010 3:41 PM

To:

b6, b7c

b6, b7c

b6, b7c

b6, b7c

b6, b7c

All,

b5DP/AC

Thank you,

b6, b7c

b6, b7c

*Senior Management Counsel
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Dept. of Homeland Security
Phone: (202) 732-*

b6, b7c

b6. b7c

b6, b7c

W: 202-732

C: 202-567-

b6, b7c

b6 b7c

Serie: 1111 May 20 10.27.10 2010

All:

b6, b7c

b6, b7c

b6. b7c

b6, b7c

b6, b7c
b6, b7c

We'll keep you updated on the interview.

b6, b7c

b6, b7c

From: b6, b7c
Sent: Thursday, May 20, 2010 6:28 PM
To: Morton, John
Subject: Fw: PAC RIM - El Flaco detained

b6, b7c

Senior Counselor to the
Assistant Secretary
U.S. Immigration and Customs Enforcement
W: 202-732-
C: 202-567- b6, b7c

From: b6, b7c
To: b6, b7c
Cc: b6, b7c
Ser
Subject: PAC RIM - b6, b7c detained

All:

Earlier today, Attaché Panama agents reported b6, b7c aka: b6, b7c was identified at the Panama airport and was approached by our agents and interviewed. b6, b7c agreed to cooperate with ICE and will be flown to New York for further debriefings. OIA is obtaining a parole for his immediate entry into the United States either later today or tomorrow. However, he has not made any statements to ICE at this time.

b6, b7c

we'll keep you updated on the interview.

Lou

b6, b7C

From: Gibson, Beth N
Sent: Wednesday, April 07, 2010 9:35 PM
To: Morton, John
Subject: Fw: NYT (03/31) Rushed From Haiti, Then Jailed for Lacking Visas
Attachments: Considerations Re Resuming Haitian Repatriations 04-07-10.doc

We can plug you in to any call on this, as you wish.

Beth Gibson
Senior Counselor
202-732- (w)
202-590- (c)

From: [REDACTED] b6, b7C
To: Gibson, Beth N [REDACTED] b6, b7C
Cc: [REDACTED] b6, b7C
Sent: Wed Apr 07 20:17:00 2010
Subject: RE: NYT (03/31) Rushed From Haiti, Then Jailed for Lacking Visas

All,

Attached is the 1-2 pager requested by the [REDACTED] b5
[REDACTED] b5 I received and incorporated edits from ICE and State on this. Esther asked that I re-circulate to this group to make sure no one has any further edits or any reservations before we ship this off [REDACTED] b5. Please let me know in the next 24 hours or so if you do. [REDACTED] b5

Thanks,

b6, b7C

From: Gibson, Beth N [mailto:[REDACTED] b6]
Sent: Thursday, April 01, 2010 10:11 PM
To: [REDACTED] b6, b7C
Cc: [REDACTED] b6, b7C
Subject: Re: NYT (03/31) Rushed From Haiti, Then Jailed for Lacking Visas

Subject to your quiding correction, I was planning to do the following:

[REDACTED]
b5DP/AC

Beth Gibson
Senior Counselor
202-732- (w)
202-590- (c)

From: [REDACTED] b6, b7C
To: [REDACTED]
Cc: [REDACTED] b6, b7C Gibson, Beth N

b6, b7C

Sent: Thu Apr 01 22:02:41 2010

Subject: Re: NYT (03/31) Rushed From Haiti, Then Jailed for Lacking Visas

b6, b7C - heard you're lead on this.

Are there talkers or qa on what we need to be saying to the hill? I know that beth s briefing the chs committee tomorrow - what is she going to say?

b6, b7C

Assistant Secretary for Legislative Affairs
U.S. Department of Homeland Security
202-447- b6

From: b6, b7C

To: b6, b7C

Cc: b6, b7C

Sent: Thu Apr 01 21:46:54 2010

Subject: Re: NYT (03/31) Rushed From Haiti, Then Jailed for Lacking Visas

Need to add nelson and elliot.

b6, b7C

Assistant Secretary for Legislative Affairs
U.S. Department of Homeland Security
202-447- b6

From: b6, b7C

To: b6, b7C

Cc: b6, b7C

b6, b7C Gibson, Beth N

Sent: Thu Apr 01 21:37:03 2010

Subject: Re: NYT (03/31) Rushed From Haiti, Then Jailed for Lacking Visas

Thanks b6, b7C

We will do.

Best,

b6, b7C

From: b6, b7C

To: b6, b7C

Cc: b6, b7C

b6, b7C Gibson, Beth N

Sent: Thu Apr 01 21:36:09 2010

Subject: Fw: NYT (03/31) Rushed From Haiti, Then Jailed for Lacking Visas

b6, b7C and b6, b7C

I've spoken to b6, b7C about this set of issues today after he heard about the releases. NSS Transborder office was initially concerned that release was inconsistent with broader policy of deterring post-earthquake arrivals, but I think now sees this has greater complexity.

I think your offices are already on this, based on Beth's 6:39 email about Hill calls expressing upset that we detained these people to begin with, and asking for briefings. Anyway please coordinate with these WH offices as this goes forward.

Thanks,

b6, b7C

b6, b7C

Principal Deputy General Counsel
Department of Homeland Security
202-282- (desk)
202-306- (cell)

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From: [REDACTED] b6, b7C
To: [REDACTED] b6, b7C
Cc: [REDACTED] b6, b7C
[REDACTED] b6, b7C Gibson, Beth N. [REDACTED] b6, b7C
[REDACTED] b6, b7C

Sent: Thu Apr 01 20:56:41 2010

Subject: FW: NYT (03/31) Rushed From Haiti, Then Jailed for Lacking Visas

[REDACTED] b6, b7C Thanks for talking with me. Based on [REDACTED] b6, b7C Beth Gibson's earlier e-mail the Hill has been calling and I understand DHS is working this issue. Can you please have DHS Leg and Public Affairs work with NSS Leg ([REDACTED] b6, b7C copied) and Press ([REDACTED] b6, b7C copied).

Thanks,

[REDACTED] b6, b7C

March 31, 2010

Rushed From Haiti, Then Jailed for Lacking Visas

By NINA BERNSTEIN

More than two months after the earthquake that devastated Haiti, at least 30 survivors who were waved onto planes by Marines in the chaotic aftermath are prisoners of the United States immigration system, locked up since their arrival in detention centers in Florida.

In Haiti, some were pulled from the rubble, their legal advocates say. Some lost parents, siblings or children. Many were seeking food, safety or medical care at the Port-au-Prince airport when terrifying aftershocks prompted hasty evacuations by military transports, with no time for immigration processing. None have criminal histories.

But when they landed in the United States without visas, they were taken into custody by immigration authorities and held for deportation, even though deportations to Haiti have been suspended indefinitely since the earthquake. Legal advocates who stumbled on the survivors in February at the Broward County Transitional Center, a privately operated immigration jail in Pompano Beach, Fla., have tried for weeks to persuade government officials to release them to citizen relatives who are eager to take them in, letters and affidavits show.

Meanwhile, the detainees have received little or no mental health care for the trauma they suffered, lawyers at the Florida Immigrant Advocacy Center said, despite an offer of free treatment at the jail by a local Creole-speaking psychotherapist.