




U.S. Immigration
and Customs
Enforcement

DEC 11 2006

MEMORANDUM FOR: Assistant Directors
Deputy Assistant Directors
Field Office Directors

FROM: John P. Torres 
Director

SUBJECT: Discretion in Cases of Extreme or Severe Medical Concern

This memorandum serves to review the importance of exercising prosecutorial discretion when making custody determinations for aliens (adults and/or juveniles) transferring from hospitals and social services or law enforcement agencies who have severe medical conditions. The Office of Detention and Removal Operations' (DRO) commitment to maintaining an end to the "catch and release" of illegal aliens does not abrogate the responsibility of DRO staff to use judicious discretion in identifying and responding to meritorious health related cases in which detention may not be in the best interest of U.S. Immigration and Customs Enforcement (ICE).

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.
- Maximize impact on enforcement and removal by not detaining aliens who are unable to complete the removal process because of severe illness.
- Reduce catastrophic health care costs.

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The following are some examples of medical conditions that should trigger or flag a need for case review and consideration of prosecutorial discretion:

- Advanced chronic conditions with complications (e.g., dialysis with liver disease).
- Advanced immuno-compromised diseases (e.g., HIV/AIDS, cancer).
- Pending/recent organ transplants.
- End-stage/terminal illnesses (e.g., cancer, renal failure).
- Paraplegics/multi-limb amputees confined to wheelchairs.
- Multi-degenerative diseases in the very elderly.
- Extreme mental retardation/mental illness/mental incompetence.
- Blindness.
- Significant pregnancy complications.

Aliens in DRO Custody

In situations where it is neither practical nor desirable to cancel a detainer or deny the pickup of a seriously ill alien (e.g., high profile case, lack of sufficient documentation), the FOD should take the adult or juvenile into custody and proceed with immigration proceedings and custody determinations as appropriate under the law (e.g., parole or release recognizance). The case of any alien subject to mandatory detention shall be coordinated with local counsel and the Executive Office of Immigration Review (EOIR) to expedite proceedings or arrive at a resolution. The U.S. Public Health Service (PHS) may be consulted when additional information or guidance is needed to clarify the type and severity of a medical condition or to identify the special needs of a detainee. The case of any alien released from custody shall be handled in accordance with policy and procedure for non-detained aliens.

While the ultimate authority to make custody determinations rests with the FOD in most cases, requests for Headquarters assistance to address novel situations or medical conditions as they relate to adult detainees may be addressed to the Detention Management Division or Removal Management Division, as appropriate. For minors detained in the custody of ICE, novel questions should be addressed to the Field Office Juvenile Coordinator (FOJC) or, if unresolved, to the Headquarters National Juvenile Coordination Unit, due to the vulnerabilities and special requirements of this population.

Requests for assistance from the Headquarters' Custody Determination Unit (CDU), Travel Document Unit (TDU), or Air Transportation Unit (ATU) should be accompanied by the necessary medical documentation and immigration case history to enable headquarters staff to arrive at the best determination or arrangement for the alien.

For questions or concerns regarding this memorandum, please contact Jay M. Brooks, Chief, Detention Health Care Unit, at (202) [REDACTED]

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