

Frequently Asked Questions (FAQs) about ICE Policy Directive Number 11061.1, *Facilitating the Return to the United States of Certain Lawfully Removed Aliens*

I was ordered removed, and am scheduled to be removed soon. How will this affect my appeal of my case, which is pending before the U.S. circuit court of appeals?

As explained in ICE Policy Directive Number 11061.1, *Facilitating the Return to the United States of Certain Lawfully Removed Aliens*, an alien who appeals his or her final order of removal to a federal circuit court of appeals may continue to litigate his or her case after being removed from the United States. Your removal will not affect your right to continue to pursue your case before the court. Although you may be abroad for the pendency of your case, the court of appeals that is currently reviewing your petition for review will nevertheless be able to review and make a decision on your case while you are not in the United States. In order to ensure that you receive notice of the decision entered by the court in your case, you should follow the court's procedures for providing updated address and contact information.

What happens if I win my case and the court grants my petition for review after I have been removed?

Absent extraordinary circumstances, ICE will facilitate your return to the United States if your case is remanded for further proceedings before the Board of Immigration Appeals or the Immigration Court and your presence is necessary for continued adjudication of your case. This may be because the court specifically ordered your presence, or because the nature of the court's decision requires you to return for further testimony. ICE may explore other options in lieu of facilitating your return, such as arranging for video teleconferencing or telephonic testimony, if appropriate.

If, after your case is remanded, the Board or Immigration Court enters a final and unreviewable decision that permits you to be physically present in the United States, ICE will facilitate your return and you will be able to obtain the status that the Board or Immigration Court has granted you.

What constitutes "extraordinary circumstances"?

Extraordinary circumstances include, but are not limited to, situations where the return of an alien presents serious national security considerations or serious adverse foreign policy considerations.

What if I believe that I need to be present in the United States for my case after I have been removed and the court grants my petition for review?

Most courts and many foreign embassies have the technology to support your participation in your immigration hearing by either video teleconferencing or by phone. However, if these alternatives are not available to you in the country to which you were removed, and your presence is required by court

order or is otherwise necessary to continue your case, you may request that ICE assist you with your return to the United States. You will need to reach out to ICE to request return to the United States.

I held lawful permanent resident (LPR) or other lawful immigration status before my removal; if my petition for review was granted, will special rules apply in my case?

ICE will facilitate your return to the United States if you were an LPR or held other lawful immigration status (which has not yet expired) prior to the entry of a removal order in your case and the court's decision vacates or reverses your removal order.

Is it my responsibility to contact DHS once I learn that a court has reversed or vacated my removal order?

Yes. ICE will initiate efforts to facilitate your return only after you have communicated with the agency to request that we do so.

How do I request assistance from DHS in facilitating my return to the United States?

Once a court grants your petition for review, you or your representative should contact ICE, which will be responsible for coordinating your return with other DHS components. In particular, you or your representative should contact the ICE Public Advocate, who can be reached at (202) 732-3100 or via email at EROPublicAdvocate@ice.dhs.gov. You should have your circuit court case number and alien registration number available, as well as detailed contact information to allow ICE to get in touch with you.

Can my lawyer, legal representative, or family member or other advocate contact the Public Advocate on my behalf?

Yes.

Will the Public Advocate let me know if ICE has agreed to facilitate my return to the United States?

The Public Advocate will route your request to the appropriate ICE offices, which will contact you or your representative concerning your potential return to the United States. The Public Advocate will also provide you with a point of contact for this process.

What does the Public Advocate do after I request ICE's assistance to return to the United States after a court grants my petition for review?

The Public Advocate will direct your request to ICE Enforcement and Removal Operations (ERO), where an appropriate supervisory official will determine whether to facilitate your return to the United States, based on the considerations explained above. If a decision is made to facilitate your return, the

subsequent process will depend on whether you will be returning to the United States by air or sea, or by land from Mexico or Canada.

If you are returning by air or sea, ERO will work with the ICE Homeland Security Investigations Law Enforcement Parole Unit (LEPU) to arrange for you to be issued appropriate transportation documents by the U.S. Embassy or Consulate abroad. The commercial air or sea carrier will rely upon that documentation to authorize you to board the U.S.-bound flight or vessel. ICE will coordinate with U.S. Customs and Border Protection (CBP) at the port of entry in advance of your arrival by air or sea. If you are traveling by land, ICE will coordinate with CBP personnel at the appropriate port of entry concerning your return to the United States.

Will I be provided a point of contact in ICE throughout the return process?

Yes. The Public Advocate will advise you as to who is the appropriate ICE point of contact for your case. However, anyone contacting ICE on your behalf who is not your attorney or accredited representative of record will need to complete and send to the ICE designated point of contact a privacy waiver, signed by you, so that case information can be exchanged. The ICE Privacy Waiver form is available on the internet at the following links: <http://www.ice.gov/doclib/news/library/forms/pdf/60-001.pdf> (English); <http://www.ice.gov/doclib/news/library/forms/pdf/60-001-sp.pdf> (Español).

The attorney or legal representative of record will need to complete and send a Form G-28 that has been signed by you in order to be able to talk to ICE officials regarding your case. The G-28 form is available on the internet at the following link: <http://www.uscis.gov/files/form/g-28.pdf>.

Do I need to fill out any U.S. government forms for ICE to decide whether to facilitate my return to the United States?

No. It is not necessary to complete any forms to begin the return process; the ICE point of contact will let you know if he or she needs additional information. Please make sure you keep ICE updated with reliable contact information, so that ICE may get in touch with you about your case and request further information, as needed.

Once ICE tells me that it will facilitate my return to the United States, what happens?

If Returning by Land:

The ICE point of contact will work with you to identify your anticipated travel dates and U.S. port of entry and coordinate with CBP so that, upon your arrival, you are allowed into the United States to resume your prior lawful immigration status and/or in order to continue to pursue your case.

If Returning by Air or Sea:

ICE will contact the appropriate U.S. Embassy/Consulate in the country to which you have been removed to prepare transportation documentation. If/when the U.S. Embassy/Consulate issues transportation

documentation, ICE will then coordinate with CBP so that, upon your arrival, you are allowed into the United States to resume your prior lawful immigration status and/or in order to continue to pursue your case.

What sort of transportation documentation will the U.S. Embassy or Consulate issue to me?

After ICE has decided to facilitate your return to the United States, you must possess a passport and appropriate transportation documentation to travel to the United States. A transportation/boarding letter is a document issued by a U.S. Embassy or Consulate abroad, allowing you to board a commercial aircraft or maritime vessel to come to the United States. A transportation/boarding letter cannot be issued without a passport or equivalent travel document.

What do I need to return to the United States?

In order to return to the United States by air or sea, you must have with you a valid passport or equivalent documentation and either a valid immigrant/nonimmigrant visa or a transportation/boarding letter authorizing your return to the United States for purposes of participating in your immigration case. If returning by land, you must have with you appropriate identity documentation, which could include a passport or other government-issued documents.

What if my country will not issue me a passport?

You will not be able to return to the United States via commercial air carrier or maritime vessel without a valid passport or equivalent travel document, and the United States Government cannot compel another country to issue such documentation. The U.S. Embassy/Consulate will not issue a transportation/boarding letter authorizing your admission without a valid passport or equivalent travel document.

Am I responsible for making my own travel arrangements to return to the United States?

Yes. You will be responsible for your own travel arrangements and informing the ICE point of contact of your arrangements. ICE's involvement in facilitating your return is generally limited to: (i) reviewing and processing any paperwork necessary for your return; (ii) working with the Department of State, through the U.S. Embassy or Consulate in your country, to obtain a transportation/boarding letter on your behalf; and (iii) and working with CBP to assist in your physical reentry upon arrival.

Who is responsible for paying for my return trip?

In cases involving removal of an individual from the United States who was subject to an administratively final order and for whom there was no stay of removal in effect at time of his or her removal, that individual will be responsible for incurring the costs for returning to the United States to resume his or her prior immigration status and/or to continue to pursue his or her immigration case.

However, as discussed above, ICE will work to ensure that you will be able to travel back to the United States if appropriate.

I provided the U.S. Embassy with my passport and received a transportation/boarding letter. I just bought an airline ticket or booked passage on a maritime vessel to return to the United States. Do I need to let DHS know?

Yes. You must let your ICE point of contact know when you plan to arrive in the United States so that he or she can coordinate with CBP at the port of entry.

I am in Mexico or Canada and plan to enter the United States by land at the border crossing. Will I need a transportation/boarding letter?

No. Transportation/boarding letters are only required for those arriving by air or sea. However, you will still need to contact your ICE point of contact and advise him/her of your travel arrangements so ICE can coordinate with CBP at the port of entry.

How long will it take from the time I request ICE to facilitate my return until my arrival in the United States?

How long this process will take may vary depending on several factors, including whether you return to the United States by land, sea or air, as well as whether you possess a valid passport at the time of the request, how long it takes the U.S. Embassy to prepare a transportation/boarding letter, etc. Absent unusual circumstances, the length of this process generally ranges from a matter of weeks to a few months.

If ICE facilitates my return to the United States after my petition for review has been granted, what will my immigration status be, if any?

ICE will regard you as returning to the status you had just prior to the administrative order that the federal court has reversed or vacated. For instance, if you had been a lawful permanent resident (LPR) just prior to the entry of a final removal order in your case, and the court's decision vacates that order, ICE will consider your LPR status to be reinstated. LPRs are generally permitted to enter and reside in the United States, and ICE will therefore generally facilitate your return to the United States. Because ICE regards you as returning you to your prior status, ICE will not treat you as an arriving alien unless you had been charged as an arriving alien prior to removal.

Please be aware that, in most instances, when a federal court reverses or vacates a final removal order, it also remands the case to the Board of Immigration Appeals or to the Department of Homeland Security for further proceedings. Accordingly, upon return, you will likely continue to be in immigration proceedings until your case is fully decided. In order to ensure that you receive notices and orders related to any future immigration proceedings, you should follow all rules requiring you to provide updated address and contact information. The forms for notifying the Immigration Courts (EOIR-33/IC)

and Board of Immigration Appeals (EOIR-33/BIA) of any change in address are available here:
<http://www.justice.gov/eoir/formslist.htm>.

When ICE facilitates my return to the United States after my petition for review has been granted, will I be detained upon my return?

You may be detained for further immigration proceedings upon your return depending on the circumstances of your case and ICE's assessment of whether you are subject to mandatory detention under the immigration laws or should otherwise be detained because you pose a danger to the community or risk of flight.

Do I need to pay a fee for ICE to consider whether to facilitate my return to the United States?

No. However, you will generally be responsible for all transportation costs back to the United States and any fees associated with acquiring the required passport or equivalent travel document from your country.

Who do I contact for status regarding my request to return to the United States?

Once you are assigned an ICE point of contact, your inquiries should be directed to that individual. However, you remain free to contact the Public Advocate with any concerns. The Public Advocate can be reached at (202)732-3100 or via email at EROPublicAdvocate@ice.dhs.gov

May I now contact the Public Advocate and request assistance from ICE if I was removed and then received a favorable court decision in the past, whether or not I previously sought to return to the United States?

Yes. If you received a favorable court decision in the past after you were removed and are unsure of whether ICE would facilitate your return, you may contact the Public Advocate for further information and evaluation of your request in accordance with ICE Policy Directive Number 11061.1, *Facilitating the Return to the United States of Certain Lawfully Removed Aliens*.