

## U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

**Policy Number: 5004.1**

### **Stays of Removal and Private Immigration Bills**

**Issue Date:** May 5, 2017

**Effective Date:** May 5, 2017

**Superseded:** This Directive supersedes any U.S. Immigration and Customs Enforcement (ICE) policies and guidance on the issuance of stays of removal in connection with private immigration bills.

**Federal Enterprise Architecture Number: 306-112-002b**

1. **Purpose/Background.** This Directive establishes policy, procedures, and responsibilities that ICE will adhere to when considering and issuing stays of removal related to private immigration bills. Private immigration bills introduced by members of Congress generally operate as a last resort for individuals who have exhausted ordinary administrative and judicial immigration remedies. The majority of present-day private immigration bills are introduced to confer lawful permanent resident (LPR) status on beneficiaries by circumventing the normal immigration law framework, including inadmissibility grounds and legal requirements that ordinarily apply to those seeking LPR status.
2. **Policy.**
  - 2.1. **Introduction of Private Immigration Bills and Requests for Investigative Reports.**
    - 1) ICE will not defer action on or halt the alien-beneficiary's immigration proceedings, including the appeal process, nor will ICE forgo the right to initiate removal proceedings or effectuate a final order of removal against an alien-beneficiary based solely on the introduction of the private immigration bill and/or ICE's receipt of a request for an investigative report.
    - 2) ICE may initiate and/or continue immigration proceedings, including the appeal process, against alien-beneficiaries who have not been issued a final order of removal. If the alien-beneficiary later becomes subject to a final order of removal during the congressional term in which the private immigration bill was introduced, ICE will consider the issuance of a stay of removal if the conditions set forth in section 2.2 of this Directive are met.
  - 2.2. **Stays of Removal for Alien-Beneficiaries.**
    - 1) ICE will consider issuing a temporary stay of removal for an alien-beneficiary who is subject to a final order of removal only if the Chair of the Judiciary Committee (or appropriate Subcommittee) of the U.S. Senate (Senate) or U.S. House of Representatives (House) explicitly requests a stay in writing, on Committee

letterhead. A request for an investigative report will no longer trigger an automatic stay of removal.

- 2) The stay, if issued, is granted by ICE as a matter of comity and courtesy between the executive and legislative branches of government to ensure Congress has the time and information it needs to consider the pending private immigration bill.
  - 3) The duration of the stay, if issued, will be limited to six months from the date it is issued by ICE. At the ICE Director's discretion, a 90-day extension may be provided beyond the six-month stay if specifically requested by the Chair of the Committee or the Subcommittee in writing, on Committee letterhead, and if necessary to accommodate extenuating circumstances.
  - 4) An alien-beneficiary who is subject to a final order of removal may receive no more than one stay as a result of the private immigration bill process. As such, ICE will not honor subsequent requests for a stay of removal from the Chair of the Committee or the Subcommittee for beneficiaries who have already received a stay through the private immigration bill process.
  - 5) ICE may initiate action to effectuate the removal of an alien-beneficiary whose final order of removal has previously been stayed through the private immigration bill process if ICE obtains any evidence about the alien-beneficiary that, in its judgment, warrants immediate removal.
3. **Definitions.** The following definitions apply for purposes of this Directive only.
- 3.1. **Alien-Beneficiary(ies).** The individual(s) on whose behalf a private immigration bill is introduced in the Senate or House.
  - 3.2. **Committee.** The Senate or House Judiciary Committee.
  - 3.3. **Investigative Report.** A report prepared by ICE for the Committee or Subcommittee containing background information necessary to determine the merits of the proposed immigration relief sought for alien-beneficiaries of a private immigration bill.
  - 3.4. **Private Immigration Bill.** Congressional legislation that provides specific immigration benefits to a named alien-beneficiary or beneficiaries.
  - 3.5. **Stay of Removal.** A discretionary determination made by ICE to temporarily defer the enforcement of a final order of removal that has been issued against an alien-beneficiary.
  - 3.6. **Subcommittee.** The Senate or House Judiciary Subcommittee that maintains appropriate jurisdiction over private immigration bills.

#### **4. Responsibilities.**

##### **4.1. The Office of Congressional Relations (OCR) is responsible for:**

- 1) Receiving the written request from the Chair of the Committee or Subcommittee for a stay of removal;
- 2) Ensuring requests for which stays of removal are considered are made by the Chair of the Committee or Subcommittee in writing on Committee letterhead;
- 3) Notifying Enforcement and Removal Operations (ERO) and the Office of the Principal Legal Advisor (OPLA) that a stay of removal has been requested for an alien-beneficiary;
- 4) Delivering ICE's decision on the request for a stay of removal to the Chair of the Committee or Subcommittee; and
- 5) Informing the Committee or Subcommittee when action has been taken to effectuate the removal of an alien beneficiary whose final order of removal has been stayed.

##### **4.2. ERO is responsible for:**

- 1) Staying the removal of the alien-beneficiaries who are the subject of a final order of removal, if appropriate and consistent with this Directive;
- 2) Notifying OPLA and OCR if it plans to effectuate the removal of an alien-beneficiary whose final order of removal has been stayed; and
- 3) Issuing additional guidance and procedures, as necessary and consistent with this Directive, for considering and issuing stays of removal related to private immigration bills.

##### **4.3. OPLA is responsible for assisting ERO, as necessary and appropriate, to address any relevant legal questions or issues associated with stays of removal requested or issued pursuant to this Directive.**

#### **5. Procedures.**

##### **5.1. Alien-beneficiaries who are subject to a final order of removal.**

- 1) ERO will consider the request for a stay of removal consistent with the policy outlined in section 2.2 and will notify OCR and OPLA of its decision.
- 2) ERO must create an entry in the ENFORCE Alien Removal Module (EARM) and in the alien-beneficiary's Alien file (A-file) noting a stay has been issued pursuant to the private immigration bill process.

- 3) After obtaining clearance from the ICE Office of the Director, OCR will inform the appropriate Chair of the Committee or Subcommittee through a formal letter of ICE's decision regarding the request for stay of removal.

**5.2. Alien-beneficiaries who have not been issued a final order of removal.**

- 1) ERO must immediately inform OCR and OPLA when the final order of removal is issued against the alien-beneficiary.
- 2) OCR must immediately notify the relevant Chair of the Committee or Subcommittee that a final order of removal has been issued against the alien-beneficiary and inform the Chair of ICE's policy on stays of removal as outlined in section 2.2 of this Directive.

**5.3. Initiation of removal of an alien-beneficiary whose final order of removal has been stayed pursuant to the private immigration bill process.**

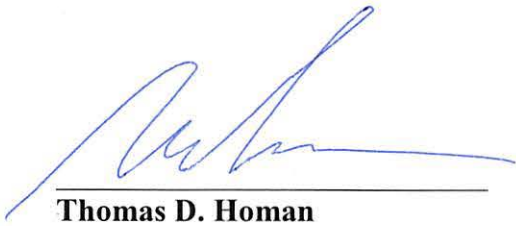
- 1) If, following the issuance of a stay of the alien-beneficiary's final order of removal, ICE obtains any evidence it believes warrants the immediate removal of the alien-beneficiary, ERO—in consultation with OPLA—may effectuate the removal of an alien-beneficiary consistent with this Directive.
- 2) OCR will notify the Chair of the Committee or Subcommittee that ICE has or is going to effectuate the removal of an alien-beneficiary who was subject to a stay pursuant to the private immigration bill process.

**6. Recordkeeping.** OCR maintains electronic copies of records generated pursuant to this Directive, including all Committee and Subcommittee request letters for stays of removal. ERO maintains records generated pursuant to this Directive, including stays of removal, in EARM and the alien-beneficiary's A-File.

**7. Authorities/References.** None.

**8. Attachments.** None.

**9. No Private Right Statement.** This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does 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. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.



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