




U.S. Immigration
and Customs
Enforcement

FEB 18 2005

MEMORANDUM FOR: All Field Office Directors



FROM: Victor X. Cerda 
Acting Director

SUBJECT: Policy Guidance on Implementation of Release Gratuity Program for
Qualified Aliens Eligible for Release Following Long-Term
Immigration Detention

The recent Supreme Court decision in Clark v. Martinez, 543 U.S. ____ (2005), requires Immigration and Customs Enforcement (ICE) to release from custody most aliens who have been detained post-final order for over 180 days and for whom it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future. This decision has resulted in the release of aliens who have been in long-term detention.

Another immediate practical impact of this decision is the release of aliens who may not be able to provide for their own release in terms of transportation and other immediate needs stemming from their release, especially in light of the duration of their detention. The attached policy guidelines allow ICE to provide these aliens with release gratuities, limited to the basic necessities incident to release, in very restricted situations. These guidelines are effective immediately.

These guidelines apply to aliens released after long-term detention in ICE custody.¹ These groups represent the aliens that will most likely fit the guideline's criteria, and for whom detention has the potential for impeding an alien's ability to garner the basic necessities incident to release. Even if an alien falls into one of these categories, however, he/she must satisfy the eligibility requirements before a release gratuity can be authorized.

This guidance is discretionary and does not obligate the FOD or his/her designee to act. However, all Field Offices are to follow these guidelines when they consider authorizing release gratuities for these designated groups of aliens. Please contact , at (202) , if you have any further questions regarding implementation of these guidelines.

¹ Whether detention is long-term is a discretionary decision made by the FOD or his/her designee on a case-by-case basis.

POLICY GUIDANCE REGARDING DISCRETIONARY RELEASE GRATUITIES FOR ELIGIBLE ALIENS RELEASED FOLLOWING LONG-TERM IMMIGRATION DETENTION

INTRODUCTION

The Department of Homeland Security, Immigration and Customs Enforcement, Detention and Removal Operations (hereinafter ICE) sometimes must release aliens from long-term detention. For example, ICE is required to release from custody certain aliens who have been detained post-final order for over 180 days and for whom it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future. These aliens, however, remain subject to final orders of removal, and pursuant to regulation, ICE must continue to attempt to effectuate their removal.

In the event that an alien due to be released lacks the means to provide for the transportation and other immediate needs necessary to effect their release, ICE, through its local Field Offices, may provide a limited gratuity to these aliens upon their release. Accordingly, all Field Offices will implement the following guidelines effective immediately.

OBJECTIVE

To establish guidelines for the discretionary provision of a set of clothing, limited financial assistance with transportation to the release destination, and a small amount of funds to those aliens upon release who are in need of, and cannot otherwise procure these items, without the assistance of ICE. Such gratuities may be provided, at government expense, when appropriate in order to ensure that ICE's local Field Offices can effectively manage each alien's release, and to assist the Field Offices in effectuating the aliens' return to custody for removal if their removal becomes significantly likely in the reasonably foreseeable future. In addition, these measures will reduce the burden on the affected communities into which such aliens are released and will present the aliens with a few basic necessities to begin a successful transition following their release.

CRITERIA

ICE, through the local Field Offices, may, in the exercise of discretion, provide limited gratuities to aliens being released from detention who clearly lack the means, whether individually or through family, community support, or otherwise, to procure certain basic necessities incident to release. In determining whether an alien meets the criteria, the following factors may be considered:

1. any resources the alien had prior to coming into custody and can access prior to or upon release, such as a bank account, savings, or money earned performing work while detained;
2. the balance of the alien's jail account and phone credit balance,
3. the amount of the alien's personal funds secured by ICE;
4. family or community resources, to include assistance offered by private citizens or charitable institutions;
5. other government benefits the alien receives or is eligible to receive (e.g., veterans' benefits, social security, etc.);
6. immediacy of other income, e.g. a pending job offer in the release destination;
7. length of time in ICE detention; and
8. mental and physical capability, such as aliens who require special assistance due to mental or physical disabilities.

After balancing these factors on a case-by-case basis, eligibility shall remain subject to the discretion of the local Field Office Director (FOD) or his/her designee. The FOD or his/her designee shall have the discretion to assign the appropriate weight given each of these factors as well as to consider any other relevant factors not listed above.

TRANSPORTATION

If deemed appropriate, the Field Office, through the FOD or his/her designee, may provide limited financial assistance to the alien for transportation to one of the following return destinations:

- the locale from which the alien entered U.S. Immigration custody,
- the alien's intended residence in the United States, or
- any other place in the United States deemed prudent by the FOD.

In the event that Field Office has identified more than one location that meets the factors above, and has determined that a transportation gratuity is appropriate, the FOD or his/her designee retain the discretion to choose which destination shall be selected. Transportation shall be via the most economical means as determined by the FOD and is subject to and the availability of Field Office resources at the time of release. Whenever possible, the government shall provide to the alien the transportation ticket, as opposed to cash or other consideration.

If the alien declines the transportation means or destination deemed appropriate in the discretion of the FOD or his/her designee, the alien shall bear the entire cost of his desired means of transportation and destination.

CLOTHING

If deemed appropriate by the FOD or his/her designee, the local Field Office may provide the alien with suitable clothing. Suitability is determined in the discretion of the Field Office in each particular situation, considering the weather conditions of the release site and release destination, the clothing available to the detainee (e.g., as provided by a sponsor or charitable organization, or being held on behalf of the alien), and the resources available to the Field Office at the time of release. Nothing in this section shall be construed to require provision of more than one day's supply of clothing.

PERSONAL FUNDS

If deemed appropriate by the FOD or his/her designee, the alien may be provided an amount of money to facilitate his return to the community. The amount shall not exceed \$100, exclusive of any clothing or transportation costs paid by the Field Office. Whether a released alien is provided an allowance, and the amount of any allowance, shall be determined by the FOD or his/her designee in their discretion after consideration of the alien's financial position and the resources available to the Field Office.

LIMITATION OF GRATUITIES

The total amount allotted to an alien *may not exceed \$250, to include transportation costs, money provided by ICE, and clothing purchased by ICE funds*, unless a waiver is received from HQDRO.

The determination of an alien's eligibility, the release destination, and the amount and/or type of provision up to \$250, and any other determination to be made pursuant to this memorandum lies within the sole discretion of the FOD or his/her designee. The decision of the FOD or his/her designee is final, may not be appealed, and may not be reviewed by any court or other body. The FOD or his/her designee are to document the A-file regarding the funds/items given to the detainee, as well as ensure that the alien signs for all funds/items provided by the Field Office.

DISCRETION

ICE has implemented this policy only to authorize the potential use of release gratuities by Field Offices within the enumerated guidelines. It is not a directive, and does not require that release gratuities be given in all circumstances that may come under the guidelines criteria.

This guidance creates no entitlement or rights, and actions taken by the Field Offices in accordance with these guidelines are discretionary. This guidance is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any third party in any manner, civil or criminal, and it does not place any limitations on otherwise lawful activities of the agency.