

Implementing Department of Homeland Security Immigration Enforcement Priorities

I. Introduction

This Instruction implements the Department of Homeland Security (DHS) policies for the apprehension, detention, and removal of aliens in the United States. This Instruction is Department-wide guidance, applicable to the activities of U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS). This Instruction informs enforcement and removal activity and detention decisions.

In general, enforcement and removal policies continue to prioritize threats to national security, public safety, and border security. DHS personnel are directed to prioritize the use of enforcement personnel, detention space, and removal assets accordingly. DHS exercises prosecutorial discretion in the enforcement of the law and, in the exercise of that discretion, ensures that use of its limited resources is devoted to the pursuit of its priorities.

This Instruction implements two of Secretary Johnson's November 20, 2014 memoranda (listed in Section III, References) that directly impact the activities of immigration officers engaged in civil immigration enforcement by:

- A. Setting forth Department-wide civil immigration enforcement priorities focused on national security, border security, and public safety including guidelines for the exercise of prosecutorial discretion at all stages of the enforcement process;
- B. Discontinuing the Secure Communities Program and implementing the Priority Enforcement Program (PEP).

II. Purpose and Scope

This Instruction provides guidance to Components charged with the administration and enforcement of immigration laws, while ensuring adherence to the roles and methodologies of each Component. The following procedures apply only to civil

immigration enforcement activities and are inapplicable to criminal investigations and civil enforcement action taken pursuant to or in furtherance of a criminal investigation.

Nothing in this Instruction should be construed to prohibit or discourage the apprehension, detention, or removal of aliens unlawfully in the United States who are not identified as DHS immigration enforcement priorities in Secretary Johnson's November 20, 2014 memorandum entitled *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*. However, resources should be dedicated, to the greatest degree possible, to the removal of aliens described in the priorities set forth, commensurate with the level of prioritization identified. Immigration officers and attorneys may pursue removal of an alien not identified as a priority provided, in the judgment of a designated DHS Component Field Responsible Official, removing such an alien would serve an important federal interest.

This is a law enforcement-sensitive document. This document contains information that would disclose techniques, procedures or guidelines for investigations or prosecutions and is exempt from release under the Freedom of Information Act.

III. References

- A. Policy Directive 044-02, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children*, Signed by Secretary Janet Napolitano on June 15, 2012.
- B. Policy Directive 044-03, *Secure Communities*, signed by Secretary Jeh Charles Johnson on November 20, 2014
- C. Policy Directive 044-04, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, signed by Secretary Jeh Charles Johnson on November 20, 2014
- D. USCIS Memorandum, *Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens*, issued on November 7, 2011.

IV. Definitions

The following definitions apply for purposes of this Instruction only:

- A. **Alien:** Any person who is not a citizen or national of the United States.

- B. Biographic identifiers:** Credible personal information obtained from a subject or a reliable third party (e.g., name, address, Social Security number, driver's license number, or permanent resident card) that can be used to identify an individual.
- C. Biometric identifiers:** An objective measurement of an anatomical, physiological, or behavioral characteristic of an individual that, when associated with an identity in a system of records, can be used to verify an individual's identity (e.g., fingerprints).
- D. DHS Component Field Responsible Official (FRO):** CBP U.S. Border Patrol (USBP) Sector Chief Patrol Agents and Office of Field Operations (OFO) Directors of Field Operations, ICE Enforcement and Removal Operations (ERO) Field Office Directors, Homeland Security Investigations (HSI) Special Agents in Charge, and the Chief Counsel of the Office of the Principal Legal Advisor (OPLA), and USCIS District Directors, USCIS Service Center Directors, and USCIS Asylum Office Directors.
- E. Enforcement action:** An activity taken by DHS to address criminal or administrative violations.
- F. Immigration Officers:** Any individual designated by the Secretary of Homeland Security, individually or by regulation, to perform the functions of an immigration officer, as described in 8 C.F.R. § 287.
- G. Interview:** A meeting or conversation, telephonic or otherwise, in which an individual is questioned by an immigration officer about his/her citizenship, nationality, and inadmissibility or deportability from the United States.
- H. Vetting:** The process of verifying the identity or other information about an individual through biographic and/or biometric identifiers.

V. Responsibilities

- A. DHS Component Field Responsible Officials (FROs)** are responsible for approving the exercise of prosecutorial discretion, when appropriate, commensurate with an alien's priority level, and for ensuring that their subordinates comply with the procedures provided in this Instruction.
- B. ICE Enforcement and Removal Operations (ERO) Field Office Directors** have additional responsibilities under section VII (D) of this Instruction.
- C. United States Border Patrol (USBP) Agents** have responsibilities under sections VI and VII (A) of this Instruction.

D. **United States Customs and Border Protection Officers** have responsibilities under sections VI and VII (B) of this Instruction.

E. **ICE Homeland Security Investigation (HSI) Special Agents** have responsibilities under sections VI and VII (C) of this Instruction.

F. **ICE ERO Deportation Officers, Immigration Enforcement Agents and 287(g) Designated Immigration Officers** have their respective responsibilities under sections VI and VII (D) of this Instruction.

G. **United States Citizenship and Immigration Services Officers** have responsibilities under sections VI and VII (F) of this Instruction.

VI. Procedures

The following procedures are to be applied universally by employees of the Components charged with the administration and enforcement of immigration laws during the course of enforcement actions.

A. **Identification.** Determine if an individual is an alien against whom DHS may take a civil enforcement action. Immigration officers determine alienage and legal authority to enter or remain in the United States. The identification process may include, but is not limited to, interviews and vetting.

B. **Investigation and Assessment.** Assess whether the alien's apprehension, detention, and/or removal meets one of the DHS civil immigration enforcement priorities. This assessment is based on the totality of information known to the immigration officer at the time. As additional facts present themselves throughout the course of the processing, detention, and removal process, it may become necessary to re-determine whether the alien continues to constitute an enforcement priority.

C. **Consultation.** In cases where there is any question whether the alien is a DHS enforcement priority, the immigration officer should consult with the appropriate DHS Component FRO and/or that official's designee.

D. **Consideration of Evidence.** At the discretion of each Component, the following evidence may be taken into consideration to assess the totality of the circumstances when determining whether the alien is an enforcement priority:

1. the alien's statements;
2. background and record checks;

3. documentation and information the immigration officer believes is relevant, including federal, state, and local forms of identification and records; or

4. if the alien cannot reasonably provide valid government-issued evidence of identity, the immigration officer may consider affidavits, sworn to or affirmed by individuals (other than the alien) who have direct personal knowledge of the events and circumstances at issue, and who provide copies of valid, government-issued photo identification documents and fully establish their own identities and addresses.

E. Prosecutorial Discretion. DHS exercises prosecutorial discretion in the enforcement of the law and, in the exercise of that discretion, ensures that use of its limited resources is devoted to the pursuit of those priorities. Prosecutorial discretion applies to the decision to issue, serve, file, or cancel a Notice to Appear, as well as a broad range of other discretionary enforcement decisions, including deciding: whom to stop, question, and arrest; whom to detain or release; whether to settle, dismiss, appeal, or join in a motion on a case; and whether to grant deferred action, parole, or a stay of removal instead of pursuing removal in a case. While DHS may exercise prosecutorial discretion at any stage of an enforcement proceeding, it is generally preferable to exercise such discretion as early in the case or proceeding as possible in order to preserve government resources that would otherwise be expended in pursuing enforcement and removal of higher priority cases. DHS personnel are expected to exercise discretion and pursue these priorities at all stages of the enforcement process—from the earliest investigative stage to enforcing final orders of removal—subject to their chains of command and to the particular responsibilities and authorities applicable to their specific position. The exercise of prosecutorial discretion is conducted on a case-by-case basis and no one factor is necessarily determinative. Decisions should be based on the totality of the circumstances.

1. In making such determinations, when information is available, DHS personnel should consider factors, such as: extenuating circumstances involving the offense of conviction; extended length of time since the offense of conviction; length of time in the United States; military service; family or community ties in the United States; status as a victim, witness or plaintiff in, civil or criminal proceedings; or compelling humanitarian factors such as poor health, age, pregnancy, a young child, or a seriously ill relative. These factors are not intended to be dispositive nor is this list exhaustive.

2. As defined in Appendix A, Priority 1 aliens must be prioritized for removal unless, in the judgment of a designated DHS Component FRO

there are compelling and exceptional factors that clearly indicate the alien is not a threat to national security, border security, or public safety and should not therefore be an enforcement priority. Priority 2 aliens should be removed unless, in the judgment of a designated DHS Component FRO, there are factors indicating the alien is not a threat to national security, border security, or public safety and should not therefore be an enforcement priority. For CBP, authority to favorably exercise prosecutorial discretion in the case of a Priority 1 or 2 alien may be delegated from a USBP Sector Chief Patrol Agent to a designee ranking no lower than Patrol Agent in Charge, or from an OFO Director of Field Operations to a designee ranking no lower than Port Director. Upon determining, based upon the above considerations, that prosecutorial discretion may be appropriate in the case of a Priority 1 or Priority 2 alien, immigration officers are to communicate this information through their chain of command as soon as practicable. The authority for exercising prosecutorial discretion in these cases rests with the FRO, except as noted above.

3. An immigration officer, in accordance with the Component's policies and procedures, may exercise prosecutorial discretion in the case of Priority 3 aliens if, in the judgment of the immigration officer, the individual is not a threat to the integrity of the immigration system, or there are factors suggesting that the individual should not be an enforcement priority.

4. If an officer believes the removal of an alien who is not otherwise identified as a priority would serve an important federal interest, the officer should communicate this information through his or her chain of command for further evaluation and appropriate action. Only an FRO may determine that the removal of such an alien would serve an important federal interest.

5. For purposes of determining whether an individual falls within Priority 3, during the transition period between the prior and new enforcement priorities, the following categories of individuals are evaluated on a case-by-case basis to determine whether their removal would serve an important federal interest:

a. Individuals who were removed and illegally reentered the country before January 1, 2014 but whose prior removal orders were reinstated after January 1, 2014;

b. Individuals ordered removed by an immigration judge before January 1, 2014, but whose timely appeals were denied on or after that date; and

c. Individuals who were granted voluntary departure by an immigration judge or the Board of Immigration Appeals before January 1, 2014, and whose voluntary departure period expired on or after that date without them having departed (thereby converting their voluntary departure into a removal order).

5. The normal expenditure of federal resources to prosecute and otherwise adjudicate an individual's immigration case, alone, will not determine whether removal of that individual serves an important federal interest. Instead, the immigration officer should consider, on a case-by-case basis, the conduct of the individual and its impact on the integrity of the immigration system in the exercise of discretion.

F. Considerations in Applying Immigration Priorities. In applying the immigration priorities, the following considerations apply:

1. **National Security Threats.** In evaluating the range of aliens who pose a danger to national security, immigration officers should refer to the statutory language found in sections 212(a)(3) and 237(a)(4) of the *Immigration and Nationality Act (INA)*, generally captioned under "Security and Related Grounds." These sections encompass: (1) aliens who have engaged in espionage, sabotage, the illegal export of goods, technology, or sensitive information, and (2) aliens who have engaged in terrorist activities, including material support of terrorist organizations, solicitation of goods, funds or membership for terrorist acts or terrorist groups and the commission of terrorist activities as defined under the INA, and human rights violators as described in Section 2 below.

2. **Human Rights Violations and Relationship to National Security Threats.** The "otherwise poses a danger to national security" language in Priority 1(a) also includes those who have participated in serious violations of human rights. This is consistent with the longstanding approach of the U.S. government that equates human rights violations with national security threats. DHS should be guided by the statutory language found in INA sections 208(b)(2)(A)(i), 212(a)(2)(G), 212(a)(3)(E), and 212(a)(3)(G). These individuals would include aliens described as having engaged in, committed, ordered, incited, assisted, or otherwise participated in severe violations of religious freedom, Nazi persecution, genocide, torture, extrajudicial killings, or use or recruitment of child soldiers, and aliens described as having ordered, incited, assisted, or

otherwise participated in persecution.

3. **Juvenile Delinquency.** An adjudication of juvenile delinquency is not treated as a conviction and will not, on its own, serve to render an alien an enforcement priority. However, if a juvenile is tried and convicted as an adult, such conviction is treated as a conviction for purposes of priorities determinations.

4. **Expunged Convictions.** Expunged convictions are assessed on a case-by-case basis to determine whether, under the particular circumstances, including consideration of public safety, the expunged conviction should make an alien a priority for removal. In considering whether an expunged conviction should be considered, immigration officers should consult with their counsel regarding any questions.

5. **Domestic Violence.** Perpetrators of domestic violence, depending on state law, are prosecuted either under generally applicable criminal statutes prohibiting assault and battery or under statutes specifically addressing domestic violence. Many states do not have specific domestic violence laws, but INA section 237(a)(2)(E)(i) applies if there was a domestic relationship between the perpetrator and victim. The memorandum's definition of domestic violence applies to convictions that are crimes of violence (as defined in section 16 of title 18) for acts of domestic violence regardless of how the state law categorizes them. Likewise, INA section 237(a)(2)(E)(i) applies to crimes of violence (as defined in section 16 of title 18) against spouses or domestic partners, both current and former, regardless of how the state law categorizes the offense.

In evaluating whether an offense constitutes a significant misdemeanor involving domestic violence, careful consideration should be given to whether the alien was also the victim of domestic violence and whether there was a connection between the conviction and the alien's own victimization. In such cases, this fact should be a mitigating factor.

6. **Driving Under the Influence (DUI).** When determining whether a conviction for DUI is a significant misdemeanor, the elements of the applicable state law are considered. A conviction (requiring proof beyond a reasonable doubt) for DUI is a significant misdemeanor if the state statute of conviction: (1) constitutes a misdemeanor as defined by federal law (the minimum penalty includes imprisonment for more than 5 days but not more than 1 year); (2) requires the operation of a motor vehicle; and (3) requires, as an element of the offense, either a finding of impairment or a blood alcohol content of .08 or higher.

a. While individuals convicted of significant misdemeanors generally fall within Priority 2 of Secretary Johnson's November 20, 2014 enforcement priorities, the Secretary's guidance makes clear that, on a case-by-case basis, a designated DHS Component FRO (or appropriate designee, in the case of CBP) can determine that such an individual is not an enforcement priority when there are factors indicating that he or she is not a threat to national security, border security, or public safety. As with all criminal convictions, these factors could include the length of time since conviction, age at the time the offense was committed, sentence and/or fine imposed, whether the conviction has been expunged, and evidence of rehabilitation.

b. In the specific context of DUI offenses, such factors, if known to the officer, may also include the level of intoxication; whether the individual was operating a commercial vehicle; any additional convictions for alcohol or drug-related DUI offenses; circumstances surrounding the arrest, including presence of children in the vehicle, or harm to persons or property; mitigating factors for the offense at issue, such as the conviction being for a lesser-included DUI offense under state law, and other relevant factors demonstrating that the person is or is not a threat to public safety.

7. **Significant Abuse of the Visa System.** Aliens who, in the judgment of a designated DHS Component FRO, significantly abuse the visa or visa waiver programs may be deemed to meet Priority 2(d) for removal. An FRO should consider the totality of the circumstance in making this decision. An FRO may find significant abuse of the visa or visa waiver programs where the alien has committed intentional violations of the immigration laws that distinguish the alien as a priority because of the noteworthy or substantial nature of the violations or their frequency. By itself, overstay of a visa or the period of admission under the visa waiver program does not constitute significant abuse. The length of time an individual has overstayed his or her period of admission as a nonimmigrant should not generally be a factor in the determination. Prior or subsequent immigration violations or an adverse credibility finding are not determinative but are relevant factors to be considered. The commission of fraud when seeking an immigration benefit, at the time of entry, or during the visa application process is a significant matter that should be considered under the totality of the circumstances.

8. **Identity Theft Convictions.** With respect to identity theft-related convictions where immigration status is not an explicit element of the

offense but may be related to the offense or arrest, DHS may presumptively regard such cases as falling within Priority 1(d), Priority 2(a), or Priority 2(b), as applicable. But an immigration officer should be sensitive to the overall circumstances of the arrest and conviction in such cases, and should discuss such cases with his or her FRO. Circumstances that may be relevant in such cases include whether DHS was the agency that presented the case for prosecution, whether there is a victim in the case, the nature of any loss or harm experienced by the victim as a result of the crime, the sentence imposed as a result of the conviction (including whether the conviction was subsequently reclassified as a misdemeanor), whether there is any indication that the conviction has been collaterally challenged based on allegations of civil rights violations, and the nature and extent of the individual's criminal history.

G. If an alien who is not an enforcement priority indicates that the issuance of a charging document would make him or her eligible for a perceived benefit and requests issuance of the charging document, the ICE or CBP officer may explain to the alien that he or she does not meet one of the Department's priorities, and that no further action is to be taken at that time. This guidance does not limit USCIS's ability to issue an NTA consistent with its policy referenced in Section III C.

VII. Component Procedures

The following requirements and procedures guide the individual Component workforces on the implementation of the Department's guidance.

United States Customs and Border Protection

A. United States Border Patrol

In accordance with the memoranda listed in section III(A) and III(D) of this Instruction:

1. Upon encountering individual(s), USBP Agents are to determine alienage and legal status to enter/remain/reside in the United States.
2. For aliens subject to removal proceedings, USBP Agents are to:
 - a. Field process the subject with basic identifying/ biographical information (e.g. name, DOB, nationality) per sector guidelines;
 - b. Transport to the nearest USBP facility with processing and biometric enrollment capabilities and enroll aliens' biographic and

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biometric information into the e3 Processing system and the IDENT/ Next Generation Identification/Automated Biometric Identification System fingerprint system; and

c. Complete appropriate record checks, including wants and warrants, immigration history, and criminal records checks.

3. For aliens who have been identified as a priority for removal or return, (and a determination has been made that prosecutorial discretion is not warranted), under current authorized processes, procedures and guidelines, USBP Agents are to:

a. Process alien under required document process (expedited removal, warrant of arrest/notice to appear, etc.); and

b. Document the case in the e3 Processing system.

4. For individuals who demonstrate that they meet the guidelines for consideration of DACA under section III (D) of this Instruction, USBP Agents are to:

a. Complete an A-file on the alien with a Full Voluntary Return path;

b. Take sworn statement from the alien in order for them to outline their claim;

c. Obtain first- and second-line supervisory approval and concurrence from the sector-designated approving Agent (contact the Office of Chief Counsel (OCC) if legal questions arise);

d. Document the case appropriately in the e3 Processing system; and

e. Provide the USCIS Hotline number to the alien upon release (800-375-5283).

5. For aliens who do not fall within one of the Enforcement Priorities, or for aliens determined to warrant an exercise of prosecutorial discretion (and who do not demonstrate that they meet the guidelines for consideration of DACA under section III (D) of this Instruction), USBP Agents are to:

- a. Complete an A-file on the subject with a Full Voluntary Return path;
 - b. Obtain first- and second-line supervisory approval and concurrence from the Sector designated approving Agent (contact OCC if legal questions arise); and
 - c. Document the case appropriately in the e3 Processing system.
6. For aliens who do not fall within one of the listed Enforcement Priorities, but a determination has been made that placing the individual in removal proceedings would be in the federal government's interest, USBP Agents are to:
- a. Obtain first- and second-line supervisory approval and concurrence from the FRO (contact OCC if legal questions arise);
 - b. Process those individuals under current authorized processes, procedures, and guidelines, including properly documenting the determination via the e3 Processing system; and
 - c. Coordinate with local ICE/ERO for detention space, if necessary.
7. For an alien in the custody of a different law enforcement agency, who is an immigration enforcement Priority 1(a), (c), (d), or (e), or Priority 2(a) or (b), USBP Agents may issue:
- a. Form I-247N (Request for Voluntary Notification of Release of Suspected Priority Alien) in cases involving jurisdictions that do not accept immigration detainers or where USBP does not yet have probable cause that the alien is removable;
 - b. Form I-247D (Immigration Detainer- Request for Voluntary Action) in cases involving cooperative jurisdictions and where there is probable cause that the subject is a removable alien. Contact OCC if legal questions arise. Probable cause sufficient to support the issuance of an immigration detainer may be established with:
 - i. A final order of removal against the subject;
 - ii. The pendency of ongoing removal proceedings against the subject;

- iii. Biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; or
 - iv. Statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.
8. USBP Agents may also issue a Form I-247D (Immigration Detainer – Request for Voluntary Action) or Form I-247N (Request for Voluntary Notification of Release of Suspected Priority Alien) when a subject is transferred to the custody of another federal, state or local law enforcement agency for a proceeding or investigation and DHS intends to resume custody of the subject to complete its processing when the proceeding or investigation is concluded.
9. In cases in which an USBP Agent intends to seek the transfer of a priority alien outside of Priority 1(a), (c), (d), or (e); Priority 2(a) or (b), from a cooperative state or local LEA, the USBP Agent must comply with CBP policies and procedures applicable to such transfers, including the form or forms developed for use in such cases.

B. Office of Field Operations

In accordance with the memoranda listed in section III(A) and III(B) of this Instruction:

1. Upon encountering individual(s), CBP Officers are to determine alienage and eligibility to enter, remain, or reside in the United States.
2. Arriving Aliens – Arriving aliens at a port of entry who are found inadmissible fall within Priority 1 and are processed and documented appropriately in SIGMA in accordance with existing policies and procedures.
3. Non-Arriving Aliens - When CBP Officers encounter a non-arriving alien, they are to determine whether the alien falls under an Enforcement Priority under section VI or the Prosecutorial Discretion Procedures under

section VII(E) of this Instruction, and, for aliens who may be subject to an enforcement action, perform the following actions:

- a. If not encountered at a port of entry, transport the alien to the nearest CBP facility with processing and biometric enrollment capabilities and enroll the alien's biographic and biometric information into SIGMA and the IAFIS fingerprint system;
 - b. Complete appropriate record checks, including wants and warrants and criminal and immigration history checks; and
 - c. Process appropriately in SIGMA in accordance with existing policies and procedures.
4. For individuals who demonstrate that they meet the guidelines for consideration for DACA under section III (D) of this Instruction, (and who are not otherwise an Enforcement Priority), CBP Officers are to document such claim in SIGMA and, with the concurrence of first- and second-line supervisory approval, release the individual.

U.S. Immigration and Customs Enforcement

C. Homeland Security Investigations

In accordance with the memoranda listed in section III(A) and III(B) of this Instruction:

1. HSI Special Agents (SAs) are to carry out their primary mission of investigating transnational organized crimes including drug smuggling, money laundering, counter proliferation and illegal export of controlled sensitive technology, trade fraud, human smuggling and trafficking, and cybercrimes. In the course of such criminal investigations, SAs may encounter individuals who are aliens. In the furtherance of their investigations, SAs are to determine if such individuals are criminally culpable and face potential arrest and criminal charges.
2. If the aliens do not face criminal charges related to the investigation, SAs are to assess whether such aliens fall under Enforcement Priority 1, 2, or 3. After full administrative processing, SAs are to prioritize the transfer of aliens in these categories to ERO custody for removal. SAs are to exercise prosecutorial discretion as early in the investigation as possible in order to preserve government resources that would otherwise be expended in pursuing enforcement and removal of higher priority cases. SAs are to document the exercise of prosecutorial

discretion during encounters with both priority and non-priority aliens.

3. SAs are to determine whether aliens encountered during an investigation may meet the guidelines for consideration of DACA under section III (D) of this Instruction. SAs are to refer such aliens to USCIS for case-by-case determinations.

For specific requirements related to the proper documentation in the Enforcement Integrated Database Arrest Graphic User Interface for Law Enforcement (EAGLE) of priority enforcement and prosecutorial discretion decisions made by SAs, please refer to sections VII(D) (5)-(8) of this Instruction below.

D. Enforcement and Removal Operations

In adherence to the memoranda listed in section III(A) and III(B) of this Instruction:

1. ICE Officers may seek the transfer of any priority alien when the state or locality agrees to cooperate with such transfer. However, under PEP, ICE Officers may seek the transfer of an alien in the custody of state or local law enforcement only when ICE has determined that the alien is an immigration enforcement Priority 1(a), (c), (d), or (e), or Priority 2(a) or (b). PEP does not apply to aliens detained in federal facilities.

2. ICE Officers are to use the following forms to request notification of release and/or request temporary detention from local and state facilities:

a. **Form I-247N Request for Voluntary Notification of Release of Suspected Priority Alien.** A Form I-247N may be issued in any case that falls within Priority 1(a), (c), (d), or (e); Priority 2 (a) or (b), as defined in Appendix A of this document. A Form I-247N may be particularly helpful in the following circumstances:

- i. DHS does not yet have probable cause that an individual is a removable alien;
- ii. Law enforcement agencies (LEAs) are unwilling or unable to accept detainees, or otherwise refuse to cooperate with DHS enforcement efforts, even in cases where probable cause does exist (e.g., not permitting DHS officers entry into jails to conduct interviews);

- iii. An alien is an immigration enforcement Priority 1(a), (c), (d), or (e), or Priority 2(a) or (b), but enough information is not known and an investigation into the alien's immigration status and criminal history is ongoing; and/or
 - iv. Other circumstances that ICE deems appropriate. Form I-247N does not request or authorize an LEA to detain the suspected alien beyond the time the alien is currently scheduled for release by the LEA, but instead requests advance notice of release.
- b. After a Form I-247N is issued and probable cause is established, a Form I-247D may also be issued for the alien.
- c. **Form I-247D - Immigration Detainer - Request for Voluntary Action.** The Form I-247D may only be issued against individuals detained in local or state custody when the officer has established:
- 1) That the subject falls within Priority 1(a), (c), (d), or (e); Priority 2(a) or (b); and
 - 2) **Probable cause** that the subject is a removable alien. Probable cause sufficient to support the issuance of an immigration detainer may be established with:
 - i. A final order of removal;
 - ii. The pendency of ongoing removal proceedings (e.g., filing of an NTA with the Immigration Court);
 - iii. Biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
 - iv. Statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate that the subject either lacks lawful immigration status or notwithstanding such status is removable under U.S. immigration law.

d. Form I-247D requests that the LEA maintain custody of the alien for a period not to exceed 48 hours beyond the time when the alien would otherwise have been released from the LEA's custody to allow ICE to assume custody. The LEA is not obligated by law to maintain custody of the subject for ICE, and this request only takes effect if the alien is served a copy of the form.

e. In cases in which an ICE Officer intends to seek the transfer of a priority alien outside of Priority 1(a), (c), (d), or (e); Priority 2(a) or (b), from a cooperative state or local LEA, the ICE Officer must comply with ICE policies and procedures applicable to such transfers, including the form or forms developed for use in such cases.

3. Detention

a. As a general rule, DHS detention resources should be used to support the enforcement priorities noted above or for aliens subject to mandatory detention by law.

b. ERO Field Office Directors should not expend detention resources, absent extraordinary circumstances or the requirements of mandatory detention, on aliens who are:

- i. known to have a serious physical or mental illness;
- ii. disabled;
- iii. elderly;
- iv. pregnant;
- v. nursing mothers and primary caretakers of children, when such aliens are being placed in an adult-only facility;
- vi. primary caretakers of an infirm person; or
- vii. persons whose detention is otherwise not in the public interest.

If an alien falls within the above categories and is subject to mandatory detention, FODS are encouraged to contact their local Office of Chief Counsel for guidance.

4. ICE Officers and Agents are to document all encounters regardless of the outcome. Alerts have been added to the following Enforcement Integrated Database (EID) modules:
 - a. EID Arrest GUI for Law Enforcement (EAGLE);
 - b. Enforcement Alien Removal Module (EARM); and
 - c. Enforcement Alien Detention Module (EADM).
5. For priority alien encounters, including those relating to aliens whose removal would serve an important federal interest, ICE Officers and Agents are to add the appropriate alert to the Bio tab in EAGLE.
6. For encounters that resulted in the exercise of prosecutorial discretion, ICE Officers and Agents are to:
 - a. Create an encounter in EAGLE with the processing disposition (PD) - prosecutorial discretion in the Bio tab in EAGLE; and
 - b. Complete Form G-166c in EAGLE stating November 2014 Executive Actions.
7. If Form I-247N or Form I-247D has been lodged in connection with an encounter that results in the favorable exercise of prosecutorial discretion, ICE Officers and Agents are to issue a new form to the LEA with the appropriate box marked to notify the law enforcement agency that it should disregard the original request. The date that the previous request was issued should be included, if known. The lifting of the request is documented in EARM with the lift code value P – prosecutorial discretion.
8. For pre-final order aliens who are detained in ICE custody, ICE Officers and Agents are to complete a custody redetermination Form I-286 in Risk Classification Assessment or EADM.
9. For final order cases, ICE Officers and Agents are to select the final order action/decision in EARM and select “Yes” for “Are there reasons that prevent removal of the alien at this time?” Select

prosecutorial discretion in the "Reason Preventing Removal" drop-down list and write November 2014 Executive Actions release in the comments section.

10. When booking an alien out of ICE custody due to the exercise of prosecutorial discretion, ICE Officers and Agents are to select DACA or PD (prosecutorial discretion) from the "Release Reason" drop-down list in the Bookout Details section of Detention Book Out, as appropriate.

11. For every alien that receives an exercise of prosecutorial discretion from ICE, ICE Officers and Agents are to add an Alert Code PD - prosecutorial discretion to the Bio tab in EAGLE or the Supporting Info tab in EARM/EADM, as appropriate. A comment is optional.

E. Monitoring of State and Local Law Enforcement Transfers

In accordance with the memoranda listed in section III(B) and pursuant to Appendix B of this Instruction, ICE, in conjunction with DHS's Office for Civil Rights and Civil Liberties (CRCL), has a role in ensuring that transfers from state and local law enforcement agency (LEA) custody to ICE for purposes of civil immigration enforcement are not based upon improper police practices by those LEAs.

1. **Notification.** When ICE officers or agents receive an allegation of, or themselves identify, improper LEA conduct, such as profiling on the basis of race, ethnicity, or limited English proficiency, that led to an individual's arrest and subsequent transfer to ICE custody for civil immigration enforcement, they are to refer the allegation to the CRCL Compliance Branch. The Detention Reporting and Information Line (DRIL) is to also refer any such allegations it receives to CRCL.

2. **Statistical Output and Modeling Development.** ICE and CRCL will develop a quarterly statistical package to enable CRCL statistical modeling. The package involves customized output of data and fields regularly maintained by ICE. Based on Fiscal Year quarters, six months from the issuance of this Instruction, ICE will provide this data on a quarterly basis. The contents of the data package are subject to periodic reexamination. The data may contain personally identifiable information (PII), as appropriate to the needs of the project. ICE will provide CRCL with technical assistance in understanding the data delivered and, where appropriate, advice on appropriate modeling and inferences.

3. **Outreach to LEAs.** ICE will assist CRCL in identifying and approaching appropriate points of contact with LEAs about whom CRCL

has concerns. While neither Component has compulsory investigative authority over LEA civil rights compliance, each will undertake reasonable and responsive best efforts to obtain information voluntarily to facilitate CRCL's inquiries.

4. Quarterly Reports, Meetings, and Remedial Steps. ICE will meet quarterly with CRCL to discuss CRCL's quarterly report regarding custody transfers, the status of any ongoing adaptive or remedial actions, and the need for any new adaptive or remedial actions.

5. Public messaging. ICE will collaborate with CRCL on messaging regarding the monitoring program and in determining the contents of any data released to the public related to CRCL statistical monitoring.

6. System improvements. ICE will develop a system, as a component element of the DHS immigration data integration project, for tracking all transfers of arrestees from LEA custody to ICE civil custody, including those who are transferred outside of PEP, through an enhancement to the appropriate system of record. This system will enable more direct monitoring of jail transfers arising outside of PEP. ICE will consult with CRCL during the development of this system to ensure that it provides CRCL with necessary and useful data to monitor such transfers, including identification of the arresting LEA, the LEA holding custody, the timing and circumstances of the transfer, the nature of the information communicated from the LEA to ICE outside of PEP, and other relevant data.

F. U.S. Citizenship and Immigration Services

In accordance with the memoranda listed in section III(A) and III(B) of this Instruction, and because the memorandum listed in section III(A) is not intended to modify USCIS Notice to Appear policies, which remain in force and effect, USCIS will:

1. Issue NTAs required by statute or regulation, including:
 - a. Termination of Conditional Permanent Resident Status and Denials of Form I-751 (8 Code of Federal Regulations (CFR) 216.3, 216.4, 216.5);
 - b. Termination of Conditional Permanent Resident Status and Denials of Form I-829 (8 CFR 216.6);
 - c. Termination of refugee status by the DD (8 CFR 207.9);

d. Denials of NACARA 202 (8 CFR 245.13(m)) and HRIFA adjustments (8 CFR 245.15(r)(2)(i)); and

e. Asylum (8 CFR 208.14(c)(1), 8 CFR 208.24(e)), NACARA 203 (8 CFR 240.70(d)), and Credible Fear cases (8 CFR 208.30(f))

2. Continue to issue other NTAs in accordance with its policies to the extent they are not inconsistent with the November 20, 2014 Enforcement Priorities.

VIII. Questions

Questions or concerns regarding this Instruction should be directed to the respective DHS component chain of command.

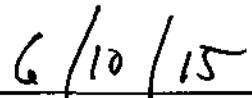
IX. Rights and Procedures

This is an internal procedures statement of DHS. 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.



Russell C. Deyo

Under Secretary for Management



Date

APPENDIX A Enforcement Priorities

As set forth in Secretary of Homeland Security Johnson's November 20, 2014 memorandum, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, the DHS immigration enforcement priorities are as follows:

Civil Immigration Enforcement Priorities

The following shall constitute the Department's civil immigration enforcement priorities:

Priority 1 (threats to national security, border security, and public safety)

Aliens described under Priority 1 represent the highest priority to which enforcement resources should be directed.

- (a) Aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security;
- (b) Aliens apprehended at the border or ports of entry while attempting to unlawfully enter the United States;
- (c) Aliens convicted of an offense for which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 521(a), or aliens not younger than 16 years of age who intentionally participated in an organized criminal gang to further the illegal activity of the gang;
- (d) Aliens convicted of an offense classified as a felony in the convicting jurisdiction, other than a state or local offense for which an essential element was the alien's immigration status; and
- (e) Aliens convicted of an "aggravated felony," as that term is defined in section 101(a)(43) of the *Immigration and Nationality Act (INA)* at the time of the conviction.

The removal of these aliens must be prioritized unless they qualify for asylum or another form of relief under our laws, or unless, in the judgment of an ICE Field Office Director, CBP Sector Chief or CBP Director of Field Operations, there are compelling and exceptional factors that clearly indicate the alien is not a threat to national security, border security, or public safety and should not therefore be an enforcement priority.

Priority 2 (misdemeanants and new immigration violators)

Aliens described in this priority, who are also not described in Priority 1, represent the second-highest priority for apprehension and removal. Resources should be dedicated accordingly to the removal of the following:

- (a) Aliens convicted of three or more misdemeanor offenses, other than minor traffic offenses or state or local offenses for which an essential element was the alien's immigration status, provided the offenses arise out of three separate incidents;
- (b) Aliens convicted of a "significant misdemeanor," which for these purposes is an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or driving under the influence; or if not an offense listed above is one for which the individual was sentenced to time in custody of 90 days or more (the sentence involves time to be served in custody, and does not include a suspended sentence);
- (c) Aliens apprehended anywhere in the United States after unlawfully entering or re-entering the United States and who cannot establish to the satisfaction of an immigration officer that they have been physically present in the United States continuously since January 1, 2014; and
- (d) Aliens who, in the judgment of an ICE Field Office Director, USCIS District Director, or USCIS Service Center Director, have significantly abused the visa or visa waiver programs.

These aliens should be removed unless they qualify for asylum or another form of relief under our laws or, unless, in the judgment of an ICE Field Office Director, CBP Sector Chief, CBP Director of Field Operations, USCIS District Director, or USCIS Service Center Director, there are factors indicating the alien is not a threat to national security, border security, or public safety, and should not therefore be an enforcement priority.

Priority 3 (other immigration violators):

Aliens described in this priority, who are not also described in Priority 1 or 2, represent the third and lowest priority for apprehension and removal. Resources should be dedicated accordingly toward removal of the following:

- (a) Those who have been issued a final order of removal on or after January 1, 2014.

Priority 3 aliens should generally be removed unless they qualify for asylum or another form of relief under our laws or, unless, in the judgment of an immigration officer, the

alien is not a threat to the integrity of the immigration system or there are factors suggesting the alien should not be an enforcement priority.

APPENDIX B

Monitoring and Addressing Civil Rights Complaints and Concerns Arising from Transfers from State or Local Law Enforcement Custody

I. Purpose

On November 20, 2014, Secretary of Homeland Security Johnson issued a memorandum entitled *Secure Communities*, in which he acknowledged the important law enforcement goal of more effectively identifying and facilitating the removal of criminal aliens in the custody of state and local law enforcement agencies. In order to address criticisms of the program, the Secretary directed ICE to discontinue the Secure Communities program and to put in its place the Priority Enforcement Program (PEP).

PEP relies on fingerprint-based biometric data, submitted during bookings by state and local law enforcement agencies (LEAs) to the Federal Bureau of Investigation, to identify priority aliens in LEA custody for potential enforcement action. PEP and the DHS enforcement priorities serve to significantly limit the potential for abuse. LEAs may cooperate in the transfer of priority aliens outside the PEP framework as well.

Recognizing the need to support community policing and maintain community trust, Secretary Johnson further directed that DHS, pursuant to a plan developed by the Office for Civil Rights and Civil Liberties (CRCL), monitor these activities, including through the collection and analysis of data, to detect inappropriate use to support or engage in biased policing, and to establish effective remedial measures to stop any such misuses.

CRCL has authority to investigate whether federal immigration enforcement activities, including those initiated based upon criminal arrests by state and local LEAs, may serve as a conduit for improper policing activities by those LEAs. CRCL investigates, identifies, and reports on areas of concern; to develop relevant facts; and where necessary to establish effective remedial measures, with respect to aliens who are transferred to ICE custody following an arrest by an LEA.

This instruction supersedes the June 14, 2011 memorandum from then-CRCL Officer Margo Schlanger and then-ICE Executive Associate Director Gary Mead, entitled *Secure Communities Complaints Involving State or Local Law Enforcement Agencies*.

II. Identification and Monitoring

Civil rights concerns regarding the use of transfers to ICE by state or local LEAs to support or engage in biased policing may come to the attention of ICE or CRCL through several channels, including:

- *Notification of individual complaints:* Allegations alleging improper LEA conduct that led to an individual's arrest and subsequent transfer to ICE custody, such as profiling on the basis of race, ethnicity, or limited English proficiency;
- *Community and public concerns:* External stakeholders, including nongovernmental organizations, advocates, or media representatives, may provide reliable information indicating improper LEA practices; and
- *Statistical monitoring:* CRCL's analysis of information routinely collected by ICE may identify patterns or trends consistent with improper police practices, warranting additional review.

Allegations by the public of this nature should be directed to CRCL's Compliance Branch. Where ICE receives an allegation of improper LEA conduct, or identifies information suggesting improper police practices, ICE refers such information to CRCL.

Not less than quarterly, CRCL monitors these transfers through statistical modeling. The information includes biometric submission and match data through PEP as well as ICE data on prioritization of aliens encountered and enforcement actions taken.

III. Assessing Civil Rights Concerns

CRCL assesses civil rights concerns at the state, county, and individual law enforcement agency levels as appropriate.

Although this Department is neither charged with nor possesses broad legal authority to investigate the activities of state and local LEAs, CRCL will to use all available and lawful means to identify when concerns arise from allegations of biased policing, misuse of federal information systems, or any other allegation of improper LEA practices that may impact federal immigration enforcement. CRCL may review DHS records and data; interview DHS personnel and complainants; and request information from LEAs. As needed, additional DHS Components provide support in aid of these efforts.

IV. Remedial Measures

On a quarterly basis, CRCL provides ICE and the Deputy Secretary of Homeland Security with a report of jurisdictions of concern (if any), and the basis for the concern. ICE and CRCL meets quarterly to discuss this report, the status of any ongoing assessments, adaptive or remedial actions previously implemented, and the need for any new adaptive or remedial action.

Where CRCL has received information that alleges biased policing, and CRCL has identified significant concerns with that jurisdiction's implementation, CRCL notifies ICE and Deputy Secretary of Homeland Security in order to develop an appropriate Departmental response. ICE acts on this information as appropriate. Early reporting on significant concerns is expected, particularly when they are the result of public allegations or reports of misconduct. CRCL provides as much transparency as reasonably feasible, consistent with law and policy, and develops appropriate outreach and public engagement plans.

If CRCL assesses or develops a good-faith basis to conclude that an LEA participating in transfers to ICE may be in violation of federal civil rights law, including but not limited to 42 U.S.C. § 14141, it notifies the U.S. Department of Justice, Civil Rights Division. CRCL may also communicate similar concerns to state attorneys general or other entities with appropriate jurisdiction.