

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

ICE Directive 5004.2: Stays of Removal and Private Immigration Bills

Issue Date: November 8, 2021
Superseded: Policy 5004.1 *Stays of Removal and Private Immigration Bills* (May 5, 2017).

1. **Purpose/Background.** This Directive establishes policy, procedures, and responsibilities for U.S. Immigration and Customs Enforcement (ICE) relating to private immigration bills. Members of Congress may introduce a private immigration bill on behalf of an individual, or group of individuals, in extraordinary cases, and such bills are typically designed to provide the noncitizen beneficiary with lawful permanent resident status.
2. **Policy.** ICE provides investigative support for private immigration bills introduced by members of Congress, which generally are introduced as a last resort for individuals who have exhausted ordinary administrative and judicial immigration remedies. Additionally, ICE will exercise discretion to consider stays of removal or other remedies for beneficiaries of private immigration bills and requests for investigative reports, where appropriate, and in accordance with the policies and procedures set forth in this Directive.
 - 2.1. **Introduction of Private Immigration Bills and Requests for Investigative Reports.** ICE will refrain from taking any action, to include granting a stay of removal or deferred action, in connection with the known beneficiary of a private immigration bill, until proper coordination with the ICE Office of Congressional Relations (OCR) occurs. ICE is not required to consider taking discretionary action to forebear detention or removal or delay an enforcement action until OCR receives a request for an investigative report on the beneficiary of the bill by the Chairperson of the House or Senate Committee on the Judiciary or of the relevant Subcommittee of jurisdiction within either committee. The indication from an individual member of Congress of an intent to file a private bill—or simply the introduction of such a bill—is not sufficient to require consideration of a stay of removal or the grant of deferred action pursuant to this Directive, but nothing herein limits ICE’s discretion to consider such requests on a case-by-case basis, where warranted.
 - 2.2. **Stays of Removal or Grant of Deferred Action for Beneficiaries.**
 - 1) When the Chairperson of the House or Senate Committee on the Judiciary or relevant Subcommittee of jurisdiction requests an investigative report from ICE pertaining to the beneficiary of an introduced private immigration bill, absent exceptional circumstances, ICE will temporarily refrain from civil immigration enforcement actions pertaining to such noncitizen(s), including, but not limited to, initiating

removal proceedings, pursuing a final order of removal,¹ or executing a final order of removal until the bill is signed into law or until Congress adjourns without acting on the bill and the subsequent grace period described in paragraph 3 below has expired.

- 2) A stay of removal or grant of deferred action, if issued as part of the private immigration bill process, 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) When Congress adjourns without taking action on such a bill, ICE will afford the new Congress adequate time for the legislation to be reintroduced and the request for an investigative report to be renewed, if so desired. This grace period will expire on March 15 of the first session of the Congress following the introduction of a private immigration bill for which an investigative report was requested.
 - 4) ICE may deny a request for a stay of removal or deferred action, or may revoke an approved stay or deferred action, and take enforcement action including immediate removal, where permitted by law, if ICE identifies evidence that civil immigration enforcement actions are warranted despite the existing request. In such circumstance, ICE will notify the appropriate committee.
 - 5) Upon expiration of any stay of removal or period of deferred action conferred in accordance with this Directive—or where such a stay or grant of deferred action is revoked as described above—ICE may, in its discretion, initiate or continue to pursue removal proceedings or take steps to execute a final order of removal, consistent with current U.S. Department of Homeland Security and ICE civil immigration enforcement priorities.
3. **Definitions.** The following definitions apply for purposes of this Directive only.
- 3.1 **Beneficiary.** The individual 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 **Deferred Action.** A temporary forbearance from enforcement against an individual as an act of prosecutorial discretion.
 - 3.4. **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 beneficiaries of a private immigration bill.

¹ Enforcement and Removal Operations (ERO) will consult with the Office of the Principal Legal Advisor (OPLA) regarding any appropriation actions to be taken in the case of a noncitizen in pending removal proceedings including, but not limited to, seeking a continuance, administrative closure, or dismissal of proceedings, where appropriate.

- 3.5. Private Immigration Bill.** Congressional legislation that provides specific immigration benefits to a named beneficiary or beneficiaries.
- 3.6. Stay of Removal.** A discretionary determination to temporarily defer the execution of a final order of removal issued against an individual.
- 3.7. Subcommittee.** The Senate or House Judiciary Subcommittee that maintains jurisdiction over private immigration bills.
- 4. Responsibilities.**
- 4.1. OCR is responsible for:**
- 1) Receiving the written request for an investigative report from the Chair of the Committee or Subcommittee;
 - 2) Notifying Homeland Security Investigations (HSI), Enforcement and Removal Operations (ERO), and the Office of the Principal Legal Advisor (OPLA) of the Congressional request for an investigative report pertaining to the beneficiary;
 - 3) Providing a complete investigative report to the Committee or Subcommittee;
 - 4) Notifying the Chair of the Committee or Subcommittee of ICE's decision on the request for deferred action or a stay of removal;
 - 5) Notifying the Committee or Subcommittee of any action and decision to proceed with execution of a removal order against a beneficiary;
 - 6) Tracking the progress of a private immigration bill after an investigative report is provided to Congress; and
 - 7) Retaining copies of all investigative reports provided to Congress for internal ICE recordkeeping.
- 4.2. ERO is responsible for:**
- 1) Issuing additional guidance and procedures, as necessary and consistent with this Directive, for considering and issuing stays of removal or granting deferred action for the beneficiaries of private immigration bills;
 - 2) Issuing the stay of removal or deferred action to the beneficiary of a private immigration bill who is the subject of a final order of removal, if appropriate, and completing any paperwork necessary for such a stay of removal;

- 3) Completing the private immigration bill investigative report, in coordination with HSI, which includes reviews of nationality (including claims of statelessness), residences, employment, service in the military, criminal history, grounds of inadmissibility or removability, relief available, and any other information pertinent to finalize a comprehensive investigative report;
- 4) Providing the complete investigative report to OCR within 30 calendar days of receiving the request from OCR;
- 5) Issuing additional guidance and procedures for considering and issuing deferred action for beneficiaries of private immigration bills;
- 6) Coordinating with HSI, OPLA, and OCR on any plans to effectuate the removal of a beneficiary who has a request for an investigative report pending, regardless of whether a stay or deferred action was granted; and
- 7) Obtaining concurrence from the ICE Director before scheduling or effectuating removal of the beneficiary of a private immigration bill.

4.3. HSI is responsible for:

- 1) Issuing additional guidance and procedures, as necessary and consistent with this Directive, to support the private immigration bill process;
- 2) Coordinating with ERO on completion of a private immigration bill investigative report, which includes any appropriate interviews and any necessary external investigations; and
- 3) Determining the extent of appropriate interviews and investigations to support ERO in completing the private bill investigative report, however, in general, anything that could reasonably aid in reaching a determination is relevant for an investigative report.

5. Procedures.

5.1. Beneficiaries who are subject to a final order of removal.

- 1) ERO will consider requests for a stay of removal and will notify HSI and OCR of its decision. If the beneficiary does not pose a national security risk or a danger to the community, then the beneficiary should ordinarily be granted a stay of removal consistent with section 2.2.
- 2) ERO must complete the appropriate paperwork to memorialize the approval or denial of a stay of removal pursuant to the private immigration bill process, including but not limited to creating an entry in the appropriate databases and in the beneficiary's

A-file noting a stay of removal has been issued pursuant to the private immigration bill process.

- 3) 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. Beneficiaries who are in pending removal proceedings or have otherwise not been issued a final order of removal.

- 1) ERO will consider requests for deferred action and will notify OCR and OPLA (in the case of noncitizens in pending removal proceedings) of its decision. If the beneficiary does not pose a national security risk or a danger to the community, then the beneficiary should ordinarily be granted deferred action consistent with section 2.2.
- 2) ERO must create an entry in the appropriate databases and in the beneficiary's A-file noting deferred action has been issued pursuant to the private immigration bill process.
- 3) ERO must inform OCR and OPLA if a final order of removal is issued against the beneficiary as soon as possible. ERO will consult with OPLA on what actions to take, if any, in the case of beneficiaries in pending removal proceedings.
- 4) OCR must notify the relevant Chair of the Committee or Subcommittee that a final order of removal has been issued against the beneficiary without delay.

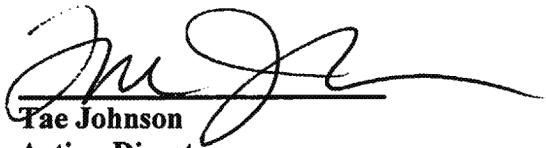
5.3. Commencing or resuming administrative proceedings to secure a removal order and/or commencing or resuming efforts to effectuate removal.

- 1) If ICE obtains any evidence that may warrant the immediate removal of the beneficiary, ERO and OCR will meet to weigh options in consultation with OPLA.
- 2) If the group determines that commencing or resuming civil immigration enforcement efforts with respect to the beneficiary—including but not limited to the initiation of removal proceedings, declining to further continue pending removal proceedings or to agree to maintain the case on any status docket, recalendaring any administratively closed cases, canceling any stay of removal, or effectuating removal from the United States—is recommended, ERO will provide a recommended course of action to the ICE Director for concurrence.
- 3) OCR will notify the Chair of the Committee or Subcommittee if ICE determines that it will initiate or resume civil immigration enforcement activities with respect to a beneficiary.

6. Recordkeeping. OCR must maintain electronic copies of records generated pursuant to this Directive, including all Committee and Subcommittee request letters for stays of removal, ICE responses thereto, and investigative reports provided to Congress. All

relevant documents produced or provided in accordance with this Directive must be maintained in accordance with an applicable National Archives and Records Administration (NARA) General Records Schedule or a NARA-approved agency-specific records control schedule. If the records are not subject to a records schedule, they must be maintained indefinitely by the agency. In the event the records are subject to a litigation hold, they may not be disposed of under a records schedule until further notification.

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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