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Office of the Director

U.S. Department of Homeland Security
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**U.S. Immigration
and Customs
Enforcement**

MEMORANDUM FOR: All ICE Employees

FROM: Caleb Vitello
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SUBJECT: Stays of Removal and Private Immigration Bills

Purpose

This memorandum provides guidance to U.S. Immigration and Customs Enforcement (ICE) personnel regarding stays of removal and private immigration bills. ICE Directive 5004.2, Stays of Removal and Private Immigration Bills, issued November 8, 2021, is now rescinded and is superseded by this guidance.

This guidance is effective immediately and remains in effect until superseded.

Background

Private immigration bills introduced by members of Congress generally operate as a last resort for an alien, or a group of aliens, who have exhausted ordinary administrative and judicial immigration remedies. Most private immigration bills are introduced with the intent to protect an alien-beneficiary¹ from removal or confer lawful permanent resident (LPR) status on alien-beneficiaries, by circumventing the normal immigration law framework, including inadmissibility grounds and legal requirements that ordinarily apply to those seeking LPR status.

Under the November 2021 policy, if a private immigration bill was introduced and the Chair of a Committee or Subcommittee requested an investigative report,² ICE provided a stay of removal³ for the bill's alien-beneficiaries until March 15th of the following session of Congress. This has resulted in removable aliens being granted multiple stays of removal not based on the merits of their case, but because they have access to a member of Congress. Some alien-beneficiaries have

¹ An "alien-beneficiary(ies)" is the individual(s) on whose behalf a private immigration bill is introduced in the House or Senate.

² An "investigative report" is 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 A "stay of removal" is a discretionary determination made by ICE to temporarily defer the execution of a final order of removal issued against an individual.

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been benefitting from the private immigration bill process for several years. Furthermore, between 2007 and 2024, members of Congress introduced 520 private immigration bills (318 in the House of Representatives and 202 in the Senate). Of those, only 11 (two percent) were passed and six (one percent) were enacted. In other words, approximately 99 percent of private immigration bills that were introduced by members of Congress were never passed or enacted. Following introduction, only 29 bills (five and a half percent) were ever taken up for consideration by the House or Senate. Yet under the November 2021 policy, Congressional action on the private immigration bill was not required for an alien-beneficiary to forestall removal.

While the intent of the November 2021 policy was to allow Congress time to consider pending private immigration bills and take appropriate action, in practice, the policy became a mechanism by which alien-beneficiaries obtained “de facto” relief from removal in the form of a continuous, indefinite stay of removal. It is not in ICE’s best interest to allow the private immigration bill process, including the mere introduction of a private immigration bill and the request for an investigative report, to be used as a mechanism to prevent or delay the removal of otherwise removable aliens. The low probability of a private immigration bill being enacted into law, combined with the agency’s past practice of issuing stays of removal to alien-beneficiaries every time an investigative report on a beneficiary was requested by the Chair of Committee or Subcommittee of jurisdiction, could prevent ICE from removing aliens in a manner consistent with the agency’s authorities and enforcement mission.

Implementation

Effective immediately, it is ICE policy that:

- ICE will consider and, on a case-by-case basis and at ICE’s discretion, issue a stay of removal for an alien-beneficiary associated with a private immigration bill only if the Chair of the full Committee or Subcommittee of jurisdiction expressly makes a written request to ICE to stay the alien-beneficiary’s removal, independent of any request for an investigative report. A request for an investigative report will no longer trigger an automatic stay of removal.
- ICE will not grant an alien-beneficiary more than one stay of removal through 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 Subcommittee of jurisdiction for an alien-beneficiary who has already received a stay through the private immigration bill process.
- The duration of a stay of removal will be limited to six months. However, the ICE Director, at his or her discretion, can provide a one-time 90-day extension beyond the initial six-month stay if specifically requested in writing by the Chair of the Committee or Subcommittee of jurisdiction and, if necessary, to accommodate extenuating circumstances.
- ICE will take appropriate action, including revocation of the stay and removal of the alien-beneficiary, in cases where ICE discovers derogatory information about an alien-beneficiary after issuing a stay of removal. In such instances, ICE will notify the

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appropriate Committee or Subcommittee of the action it takes.

Introduction of Private Immigration Bills and Requests for Investigative Reports

ICE will not defer action on or halt an 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.

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 may consider the issuance of a stay of removal subject to the requirements and procedures described in this policy memorandum.

Stays of Removal for Alien-Beneficiaries

ICE will consider and, on a case-by-case basis and at ICE's discretion, issue a temporary stay of removal for an alien-beneficiary who is subject to a final order of removal only if the Chair of the full Committee or Subcommittee of jurisdiction explicitly requests a stay of removal in writing, on Committee letterhead. A request for an investigative report will no longer trigger an automatic stay of removal.

The stay of removal, 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. 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 one-time 90-day extension may be provided beyond the six-month stay if specifically requested in writing by the Chair of the Committee or the Subcommittee, on Committee letterhead and, if necessary, to accommodate extenuating circumstances.

An alien-beneficiary who is subject to a final order of removal will receive no more than one stay of removal and one extension because 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 an alien-beneficiary who has already received a stay through the private immigration bill process.

ICE may initiate action to revoke the stay of removal and 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.

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Responsibilities

The Office of Congressional Relations (OCR) is responsible for: (1) receiving the written request from the Chair of the Committee or Subcommittee for an investigative report or stay of removal and ensuring such requests are written on Committee or Subcommittee letterhead; (2) notifying applicable ICE Directorates and Program Offices about the Congressional request; (3) providing a complete investigative report to the Committee or Subcommittee and/or notifying the Chair of the Committee or Subcommittee about ICE's decision in response to the written request for a stay of removal, including any action or decision to proceed with execution of a removal order against an alien-beneficiary; and (4) tracking the introduction, progress, and final result of all private immigration bills.

Enforcement and Removal Operations (ERO) is responsible for: (1) staying the removal of an alien-beneficiary who is subject to a final order of removal, if determined to be appropriate and consistent with this policy memorandum; (2) notifying OCR and the Office of the Principal Legal Advisor (OPLA) if it plans to effectuate the removal of an alien-beneficiary whose final order of removal has been stayed; and (3) issuing additional guidance, as necessary and consistent with this policy memorandum, for considering and issuing stays of removal related to private immigration bills.

All applicable ICE Directorates/Program Offices are responsible for coordinating with OCR and ERO on the timely completion and submission of investigative reports (including the completion of any appropriate interviews or any necessary external investigations).

Recordkeeping

OCR must maintain electronic copies of records generated pursuant to this policy memorandum, including all Committee and Subcommittee letters requesting investigate reports or stays or removal, as well as ICE's response to such letters, including completed investigative reports. All relevant documents produced or provided in accordance with the policy memorandum 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.

No Private Right

This memorandum 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.