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Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

April 10, 2025

MEMORANDUM FOR: All ICE Employees

FROM: Todd M. Lyons
Acting Director 

SUBJECT: Consideration of U.S. Military Service During Civil
Immigration Enforcement Actions

Purpose

This memorandum provides guidance to U.S. Immigration and Customs Enforcement (ICE) personnel regarding consideration of U.S. military service during civil immigration enforcement actions. ICE Directive 10039.2, *Consideration of U.S. Military Service When Making Discretionary Determinations with Regard to Enforcement Actions Against Noncitizens*, issued May 23, 2022, is now rescinded and is superseded by this guidance.

This guidance is effective immediately and remains in effect until superseded.

Background

ICE values the contributions of all those who have served in the U.S. military; however, U.S. military service alone does not automatically exempt aliens from the consequences of violating U.S. immigration laws. Since 2004, ICE has had various policies and procedures in place governing cases in which an alien encountered by ICE claims U.S. military service.¹ Similarly, the former Immigration and Naturalization Service recognized that an alien's U.S. military service should be considered in determining whether to issue a Notice to Appear (NTA). For the purposes of this memorandum, U.S. military service is defined as service in the National Guard

¹ See ICE Directive 10039.2, *Consideration of U.S. Military Service When Making Discretionary Determinations with Regard to Enforcement Actions Against Noncitizens* (May 23, 2022); Memorandum from Victor Cerda, Acting Director, ICE Office of Detention and Removal Operations, to All Field Office Directors, *Issuance of Notices to Appear, Administrative Orders of Removal, or Reinstatement of a Final Removal Order on Aliens with United States Military Service* (Sept. 3, 2004); Memorandum from Marcy M. Forman, Acting Director, ICE Office of Investigations, to All Special Agents in Charge, et al., *Issuances of Notices to Appear, Administrative Orders of Removal, or Reinstatement of a Final Removal Order on Aliens with United States Military Service* (June 21, 2004) (later published as ICE Policy No. 10039.1).

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or the active or reserve components of the U.S. Army, Air Force, Navy, Marine Corps, Coast Guard, or Space Force.² Service can be for any length of time but must include more than basic training.

Implementation

ICE personnel must ensure cases involving aliens with U.S. military service are properly handled. This includes ensuring consistent implementation of existing policies and procedures, identifying and documenting information related to aliens with U.S. military service, as well as collecting and maintaining complete data on aliens with U.S. military service who are in removal proceedings or who have been removed.

Effective immediately, it is ICE policy that:

- The alien bears the burden of proof regarding U.S. military service; however, ICE personnel must proactively ask all aliens during intake interviews whether they have U.S. military service.
- ICE personnel must investigate an alien's claim of U.S. military service and continue to use the "U.S. Military Service Checklist" to document the alien's biographical information, military service details, family and community ties, criminal and immigration history, and potentially available relief or naturalization eligibility.
- If an alien's U.S. military service has been verified, ICE personnel must consider whether the alien appears statutorily eligible for naturalization based upon his or her U.S. military service, pursuant to sections 328 or 329 of the Immigration and Nationality Act (INA).
- Field Office Directors (FODs) and Special Agents-in-Charge (SACs) have the authority to approve the issuance and service of an NTA, the initiation of administrative removal proceedings under section 238(b) of the INA (administrative removal), or reinstatement of a final order of removal to an alien with U.S. military service. ICE Headquarters-level review and approval may be requested but is not required.
- ICE will generally not issue an NTA, initiate administrative removal, or reinstate a final order of removal against an alien who is currently serving on active duty in the U.S. military, absent significant aggravating factors. When significant aggravating factors are present, the FOD or SAC, or their designee, must coordinate with the U.S. service member's chain of command and applicable military law enforcement authorities.

ICE will continue to prioritize a consistent and unified approach to handling cases where an alien claims U.S. military service while upholding and enforcing U.S. immigration laws.

Identifying, Investigating, and Documenting U.S. Military Service

² See 38 U.S.C. § 101(10).

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The alien bears the burden of proof regarding U.S. military service; however, ICE personnel must proactively ask all aliens during intake interviews whether they have U.S. military service. When ICE personnel encounter an alien who claims U.S. military service, this claim must be documented in the Enforce Alien Removal Module (EARM), or any relevant case management systems, and in the narrative section of the Form I-213, Record of Deportable/Inadmissible Alien, if prepared by ICE. Additionally, ICE personnel must thoroughly investigate the claim and complete the attached "U.S. Military Service Checklist" to document the alien's biographical information, military service details, family and community ties, criminal and immigration history, and available relief or naturalization eligibility. All documents associated with an alien's claim of U.S. military service must be placed in the A-file.

To investigate an alien's claim of U.S. military service, ICE personnel should: (1) obtain any material evidence regarding the alien's service, such as branch and duty status; date and type of discharge; service during a designated conflict; number of years of service; decorations or medals awarded; injuries sustained; evidence of court martials, if any; and any other relevant service-related information; and (2) if the alien is detained, take reasonable steps to facilitate the alien's efforts to secure records that verify U.S. military service.

The following non-exclusive list of documents may serve to verify U.S. military service:

- DD Form 214, Certificate of Release or Discharge from Active Duty;
- NGB Form 22, National Guard Report of Separation and Record of Service;
- Veterans Administration issued identification card;
- Veterans Administration disability letter; and/or
- Evidence of service-connected disability payments.

To the extent practicable, ICE personnel should facilitate communication between a detained alien and his or her legal representative, as well as family members and other individuals with relevant documentation related to U.S. military service.

Active Duty

FODs and SACs should generally not authorize issuance of an NTA, initiation of administrative removal, or reinstatement of a final order of removal against an alien who is currently serving on active duty in the U.S. military, absent significant aggravating factors. In cases in which the FOD or SAC determines that significant aggravating factors are present, the FOD or SAC, or their designee, must consult with the alien's military chain of command and appropriate military law enforcement authorities and coordinate the service of the NTA, administrative removal, or reinstatement of removal so that the alien can be served immediately upon discharge, or as operationally necessary.³

ICE personnel are not prohibited from placing an active duty alien into immigration proceedings.

³ Unless it is infeasible to do so, such consultation should occur prior to the enforcement action being taken.

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However, prior to authorizing the issuance of an NTA, administrative removal, or reinstatement of removal, FODs and SACs should consider the totality of the circumstances, including but not limited to: (1) whether it is possible to successfully coordinate with the appropriate military law enforcement authorities; (2) whether the alien is likely to abscond if he or she is discharged prior to being placed in proceedings; and (3) whether service of the NTA, administrative removal, or reinstatement of removal can be arranged so that the alien can be served immediately upon discharge.

Eligibility for Naturalization

ICE will generally not initiate removal proceedings against aliens with U.S. military service who appear eligible for naturalization pursuant to INA §§ 328 or 329. In cases in which ICE will not initiate removal proceedings or where, as a matter of discretion, ICE will seek dismissal of removal proceedings, the FOD or SAC, or their designee, must notify the alien that he or she might be eligible for naturalization pursuant to INA §§ 328 or 329 and that he or she might be eligible to apply with U.S. Citizenship and Immigration Services, via Form N-400, Application for Naturalization.⁴

Prior to notifying the alien of his or her potential eligibility for naturalization, the FOD or SAC, or their designee, and in consultation with the ICE Office of the Principal Legal Advisor (OPLA), must conduct a thorough review to determine an alien's potential eligibility for naturalization under INA §§ 328 and 329, because those sections contain special provisions for members of the U.S. military. U.S. military service constitutes indicia of potential U.S. citizenship under Section 3.1 of ICE Directive 16001.2, *Investigating the Potential U.S. Citizenship of Individuals Encountered by ICE* (Nov. 10, 2015, or as updated). Prior to any enforcement action, and in consultation with OPLA, FODs and SACs are therefore responsible for ensuring the proper completion of a memorandum when an alien has verified U.S. military service, documenting relevant facts of the alien's case in accordance with the requirements.⁵ The memorandum must analyze the alien's eligibility for naturalization under INA §§ 328 and/or 329, as well as whether the evidence in the case strongly suggests the alien is a U.S. citizen or his or her claim to U.S. citizenship is credible on its face, or if probative evidence indicates that the alien may be a U.S. citizen under other provisions of law.

Other Factors for Consideration

If ICE determines that an alien with U.S. military service does not appear eligible for naturalization pursuant to INA §§ 328 or 329 and the alien has not otherwise established a probative claim to U.S. citizenship, the FOD or SAC must consider the alien's overall criminal history (as well as any evidence of rehabilitation), family and financial ties to the United States, employment history, physical and mental health, community service, specifics of military service, and other relevant factors as determined by ICE.

⁴ ICE personnel may provide the alien with a copy of Form N-400.

⁵ See ICE Directive 16001.2, Sec. 5.1.

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When reviewing criminal history, the FOD or SAC should consider crimes involving violence, aggravated felonies, drug smuggling/trafficking, or crimes against children to be a threat to public safety. When reviewing the specifics of military service, the FOD or SAC should consider duty status (active or reserve), assignment to a war zone, years of service, and decorations or awards. An honorable discharge does not necessarily prevent an alien with U.S. military service from being subject to immigration enforcement action.

Responsibilities

All ICE Directorates and Program Offices are responsible for:

- Developing and issuing any necessary implementation guidance, in consultation with the Office of Regulatory Affairs and Policy and OPLA;
- Creating and maintaining a system for centralized tracking and reporting of aliens with U.S. military service, including readily available statistical distinctions between verified, unverified, and false claims of such service;
- Developing and delivering training to applicable personnel within their area of responsibility; and
- Consulting with OPLA attorneys when immigration proceedings against aliens with U.S. military service are initiated by an entity other than ICE to ensure U.S. military service is adequately considered, documented, and described throughout the course of immigration proceedings.

Training

ICE Directorates and Program Offices must work with the ICE Office of Leadership and Career Development and/or applicable training academy personnel to provide annual training to applicable ICE personnel on the procedures and documentation requirements involving aliens with U.S. military service, as described in this memorandum. This training must be completed upon entry on duty and annually thereafter.

Recordkeeping

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,

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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.

Attachment

- U.S. Military Service Checklist

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U.S. Military Service Checklist

Biographical Information			
Alien Name:		A Number:	
DOB:		Nationality:	
Date of entry:		Status at last entry:	
Alien is subject to: <i>(check all that apply)</i>	☐ removal proceedings under INA _____ ☐ a reinstatement of a final order of removal ☐ an administrative order of removal		
Is the alien currently detained by ICE?		☐ Yes ☐ No	
If yes, date entered ICE custody			
Military Service			
Is the alien <i>(check all that apply)</i>	☐ an active duty, full-time servicemember? ☐ currently in the Reserves? ☐ currently in the National Guard? ☐ an individual who has prior military service? ☐ other: _____		
Has the U.S. military service claim been verified? <i>(NOTE: if the alien is detained, ICE must make reasonable efforts to verify)</i>	☐ Yes ☐ No ☐ Claim determined to be false	If yes, identify and attach verifying document(s) If no, identify steps taken to verify If claim determined to be false, please explain	
If the alien is currently in the military:	What branch? What is his/her duty station? Expected discharge date? To your knowledge, is the alien facing military disciplinary action?		☐ Yes ☐ No
If the alien has prior U.S. military service, list:	Dates of service: Type of discharge: Was the service in an area of armed conflict?		☐ Yes ☐ No

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List all awards, medals, decorations, commendations, and any other relevant information related to the alien's U.S. military service			
Family / Community Ties			
The following information has been gathered and incorporated into recommendation regarding whether to exercise prosecutorial discretion in favor of, or to take an enforcement action against, an alien with U.S. military service:			
☐ Family ties, status, and significant medical issues for immediate family in the U.S. ☐ Alien's significant medical/mental health issues, if any ☐ Alien's Employment History ☐ Community ties ☐ Financial ties			
Criminal and Immigration History			
All relevant details of the alien's criminal history, including evidence of rehabilitation, have been included in the recommendation? ☐			
Alien was on parole / probation and:		☐ Successfully completed parole/probation ☐ Violated parole/probation ☐ Has never been on parole or probation	
Available Relief / USC claim			
List applications pending, approved, denied			
List any potential relief from removal			
Is the alien eligible to naturalize under INA §§ 328 or 329?		☐ Yes ☐ No	
Status of USC claims memo <i>(Note: Military service is an indicia of U.S. citizenship triggering a USC claims memo regardless of whether the alien's claims U.S. citizenship).</i>		☐ In progress, will be provided to OPLA for review by ☐ Submitted to OPLA for review on ☐ Submitted to FOD/SAC for review and signature on ☐ Forwarded to HQ on ☐ A U.S. citizenship claims memo has not been completed as a recommendation has been made not to proceed with an enforcement action. <i>(Note: if enforcement action continues, a claims memo will be required).</i>	
		Provide Date:	
Prepared by:		Sign and Date	