

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

11061.1: Facilitating the Return to the United States of Certain Lawfully Removed Aliens

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1. **Purpose/Background.** Under the Immigration and Nationality Act (INA), as amended, aliens who petition the circuit courts of appeals for review of their administrative removal orders may continue to litigate their petitions after their removal from the United States. Absent a court-ordered stay of removal, U.S. Immigration and Customs Enforcement (ICE) may lawfully remove such aliens while their petitions for review (PFRs) are pending. This Directive describes existing ICE policy for facilitating the return to the United States of certain lawfully removed aliens whose PFRs are granted by a U.S. court of appeals or the U.S. Supreme Court. This Directive applies only to supervisors in Enforcement and Removal Operations (ERO), Homeland Security Investigations (HSI), and the Office of the Principal Legal Advisor (OPLA). This Directive does not apply to bargaining unit employees.
2. **Policy.** Absent extraordinary circumstances, if an alien who prevails before the U.S. Supreme Court or a U.S. court of appeals was removed while his or her PFR was pending, ICE will facilitate the alien's return to the United States if either the court's decision restores the alien to lawful permanent resident (LPR) status, or the alien's presence is necessary for continued administrative removal proceedings. ICE will regard the returned alien as having reverted to the immigration status he or she held, if any, prior to the entry of the removal order and may detain the alien upon his or her return to the United States. If the presence of an alien who prevails on his or her PFR is not necessary to resolve the administrative proceedings, ICE will not facilitate the alien's return. However, if, following remand by the court to the Executive Office for Immigration Review (EOIR), an alien whose PFR was granted and who was not returned to the United States is granted relief by EOIR or the Department of Homeland Security (DHS) allowing him or her to reside in the United States lawfully, ICE will facilitate the alien's return to the United States.
3. **Definitions.** The following definitions apply for purposes of this Directive only:
 - 3.1. **Facilitate an Alien's Return.** To engage in activities which allow a lawfully removed alien to travel to the United States (such as by issuing a Boarding Letter to permit commercial air travel) and, if warranted, parole the alien into the United States upon his or her arrival at a U.S. port of entry. Facilitating an alien's return does not necessarily

include funding the alien's travel via commercial carrier to the United States or making flight arrangements for the alien.

- 3.2. **Petition for Review (PFR).** A request for a U.S. court of appeals to review a removal order entered by ICE or EOIR under 8 U.S.C. § 1252, INA § 242. The U.S. courts of appeals' PFR decisions are subject to review by the U.S. Supreme Court through a petition for writ of certiorari.
- 3.3. **Restore an alien to lawful permanent resident (LPR) status.** To enter a judicial decision which renders non-final an administrative removal order against an LPR. *See Matter of Lok*, 18 I&N Dec. 101 (BIA 1981) (holding that an LPR retains such status until the entry of a final administrative order of removal), *aff'd*, 681 F.2d 107 (2d Cir. 1982). Practically speaking this means that, when a PFR is granted that returns a former LPR to the posture of a pre-order alien, the alien will once again, in contemplation of law, be an LPR even though removal proceedings may still be pending before EOIR on remand from the circuit court.
- 3.4. **Stay of Removal.** An order issued by EOIR or a federal court which prevents ICE from executing a removal order.
4. **Responsibilities.**
 - 4.1. ERO, HSI, and OPLA supervisors must fully coordinate at the local, international, and Headquarters levels to effectuate this policy.
5. **Procedures/Requirements.** None
6. **Authorities/References.**
 - 6.1. INA § 101(a)(20), 8 U.S.C. § 1101(a)(20).
 - 6.2. INA § 212(d)(5), 8 U.S.C. § 1182(d)(5).
 - 6.3. INA § 242, 8 U.S.C. § 1252.
 - 6.4. 8 Code of Federal Regulations (CFR) § 212.5.
 - 6.5. DHS Delegation Number 7030.2, "Delegation of Authority to the Assistant Secretary for the Bureau of Immigration and Customs Enforcement" (November 13, 2004).
 - 6.6. Memorandum of Agreement (MOA) between United States Citizenship and Immigration Services (USCIS), ICE, and Customs and Border Protection (CBP), "Coordinating the Concurrent Exercise by USCIS, ICE, and CBP, of the Secretary's Parole Authority Under INA § 212(d)(5)(A) with Respect to Certain Aliens Located Outside of the United States" (September 29, 2008).

- 6.7. MOA between ICE and CBP, “Significant Public Benefit Parole Protocol for U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement for Law Enforcement Purposes” (September 22, 2005).
- 6.8. *Matter of Lok*, 18 I&N Dec. 101 (BIA 1981), *aff’d*, 681 F.2d 107 (2d Cir. 1982).
- 7. **Attachments.** None
- 8. **No Private Right.** This Directive 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.



John Morton
Director
U.S. Immigration and Customs Enforcement