



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

JUL 11 2006

MEMORANDUM FOR: Deputy Assistant Director
Field Office Directors

FROM: John P. Torres
Acting Director

SUBJECT: DRO Policy and Procedure Manual (DROPPM) Update:
Chapter 17.15 Failure to Cooperate

17.15 Failure to Cooperate.

(a) General. The statutory removal period may be extended for an alien refusing to assist in obtaining travel documents or cooperate in the removal process [REDACTED] and [REDACTED]. If the willful refusal to cooperate persists and the alien is removable under INA [REDACTED], the alien becomes subject to criminal prosecution under [REDACTED].

(b) Definitions.

Form [REDACTED] Memorandum of Investigation: the generic form on which to record evidence of the subject's unwillingness to cooperate in efforts to secure travel documents.

Form I-229(a) Warning for Failure to Depart: advises the alien of the consequences of disregarding the terms of the final order of removal, i.e., failing to depart, which include the need to cooperate with immigration authorities. (See <https://dhsonline.dhs.gov/portal/html/community.jhtml?index=43&community=ICE&id=2011880003> for an on-line copy of the form.)

Instruction Sheet to Detainee: advises alien of the need to cooperate with immigration authorities seeking to effect his/her removal, lists actions the alien must take, and indicates consequences of noncompliance. (See <https://dhsonline.dhs.gov/portal/html/community.jhtml?index=43&community=ICE&id=2011880003> for Instruction Sheet to Detainee.)

Notice of Custody Review: per [REDACTED], notification of a custody review after 30 days, affording the alien sufficient time to provide documents supporting release from ICE custody, and to demonstrate that he/she does not pose a flight risk or threat to the community. (See <https://dhsonline.dhs.gov/portal/html/community.html?index=43&community=ICE&id=2011880003> for Notice of Custody Review.)

Notice of Failure to Comply: a letter informing the alien that failure to assist in efforts to obtain travel documents or effect removal has caused DRO to keep him/her in custody and extend the removal period; also advises of possible criminal prosecution. (See <https://dhsonline.dhs.gov/portal/html/community.html?index=43&community=ICE&id=2011880003> for Notice of Failure to Comply.)

(c) Procedures.

(1) First 90 Days. Verify that the order of removal is administratively final. During the 90 day removal period, you must make every effort to remove the alien. For proper case management:

- Send out a travel document request (see [REDACTED]);
- Serve the alien with Form I-229 (a) and Instruction Sheet to Detainee no later than the 30th day of the removal period;
- Serve the Notice of Failure to Comply if the alien has not cooperated with efforts to effect his/her removal as provided in the I-229 (a) and Instruction Sheet to Detainee by the 60th day of the removal period;
- Serve the alien with a Notice of Custody Review no later than the 60th day of the removal period;
- Follow-up with consulate or embassy regarding travel document issuance on a weekly basis (see [REDACTED]);
- Follow-up with the alien regularly if the consulate or embassy has requested additional information to process the travel document request;
- If a question of identity arises, interview the alien to elicit detailed biographical information. Administer the Miranda warnings (see [REDACTED] of the Law of Arrest, Search and Seizure Manual, M-69); notify the alien's legal representative.

- If the identity question persists, contact outside sources to establish the alien's identity, e.g., request foreign investigations through the U.S. Embassy, Interpol, etc. (see [REDACTED]);
- Contact the HQ Travel Document Unit no later than the 75th day of the removal period, or sooner if you do not expect local issuance of the travel document (see [REDACTED]);
- Serve the Failure to Comply notice every 30 days until the alien comes into compliance.

Once the Notice of Failure to Comply has been served, the 90-day removal period is suspended. The 90-Day Post Order Custody Review is still required. Once the alien begins to cooperate, the 90-day removal period resumes.

Once the alien is in "failure to comply" status, you continue to maintain local jurisdiction (do not forward to HQDRO for a *Zadvydas* review ([REDACTED])). Instead, you will prepare paperwork for possible criminal prosecution ([REDACTED]) by the Office of the U.S. Attorney. Proceed as follows:

- Create a prosecution folder to hold the [REDACTED] and any other material you will use to persuade the Assistant U.S. Attorney (AUSA) to accept the case for prosecution; maintain this folder inside the alien's A-file;
- Record details of the criminal allegations on the G-166C, Memorandum of Investigation, citing every instance of the alien's refusal to cooperate and obstruction of the removal process in chronological order; (For a sample, see [REDACTED].)
- Using this record, prepare a declaration demonstrating the alien's failure to cooperate; (For a sample, see [REDACTED].)
- Present the G-166C and declaration to the Office of the U.S. Attorney;
- If the AUSA accepts the case, prepare an affidavit. (For a sample, see [REDACTED].) You may seek assistance from local counsel. You may also meet with the AUSA to discuss the specifics of the case;
- If the AUSA declines to prosecute, request a written declination with explanation. Record the AUSA's name, date, and reason for declining on [REDACTED]. You will continue using the G-166C to document every failure to cooperate until the alien's departure from the United States.

- Continue efforts to remove the subject and continue documenting the prosecution folder and the A-file. At such time as the alien is released from detention, send a complete copy of the prosecution file to HQDRO. HQDRO will monitor cases declined for prosecution for possible follow-up with the Criminal Division of the Executive Office of United States Attorneys.
- Keep a record of all cases you refer to the Office of the U.S. Attorney, including the disposition of each. (Every Field Office is required to keep statistics on all such referrals.)

(2) Initial 90-Day Removal Period Has Expired. Continue to practice proper case management. Good case management positions DRO to pursue criminal prosecution and defend *habeas corpus* petitions in federal courts.

Proper case management requires that you:

- Issue the alien Form I-229(a) and the Instruction Sheet to Detainee, which specify, in writing, the actions/obligations with which he/she must comply in a specified timeframe;
- Issue subsequent I-229(a) and Failure to Comply notices every 30 days until the alien cooperates or takes reasonable steps to do so within the specified timeframe (usually 30 days). Examples of noncompliance include refusing to complete a travel document application, refusing to be interviewed by the consulate or embassy, providing false biographical information;
- Describe on the Failure to Comply notice how the alien has not cooperated and clearly state what the alien must do to come into compliance. This documents that the alien has been notified of his/her responsibilities to cooperate with removal, has been given another opportunity to cooperate, and has been reminded of the penalties of noncompliance;
- Use the [REDACTED] and the comments screen in DACS to record dates and times of interviews with the alien;
- Make regular attempts to verify biographical information through outside sources, e.g., family members, friends, the State Department Desk Officer for that country, and the U.S. Embassy;
- Despite the alien's lack of compliance, continue to contact consular or embassy personnel to persuade them to issue a travel document absent the alien's cooperation. Coordinate actions with Headquarters Travel Document Unit (see [REDACTED]). For information on custody reviews for uncooperative aliens, see [REDACTED], above.