



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: Assistant Directors
Deputy Assistant Directors
Field Office Directors
Deputy Field Office Directors

FROM: Gary E. Mead
Acting Director

SUBJECT: Interim Procedures for Detained Post-Order National Security Cases

Purpose

This memorandum outlines interim policies for the review and hold by DRO Field Offices of certain specified detained cases where the alien has an administratively final order of removal due to national security (NS) charges or bars to relief or protection. Further guidance will be forthcoming for non-detained final order NS cases, NS cases currently in proceedings before the Executive Office for Immigration Review, and for referring all qualified cases to USCIS for further evaluation.

These matters are time sensitive. Please ensure that all detained final order NS cases in your office are reviewed within 30 days of the receipt of this interim guidance, and e-mail Calvin McCormick, Acting Assistant Director for Field Operations, once you have completed the review.

Background

The Immigration and Nationality Act (INA) renders aliens inadmissible or removable for a range of activities tied to terrorist acts or organizations. See INA § 212(a)(3)(B)(i)(I)-(IX). Aliens tied to these activities are also usually barred from relief, protection, or a benefit they seek under the INA. One of the most common issues encountered is aliens barred from receiving asylum relief because they have provided material support: (1) for the commission of a terrorist activity; (2) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity; (3) to a Tier I or Tier II terrorist organization or to any member of such an organization; or (4) to a Tier III terrorist organization or to any member of such an organization, unless they can demonstrate by clear and convincing evidence that they did not know and reasonably should not have known that the organization was a terrorist organization. See INA § 212(a)(3)(B)(iv)(VI) (material support), (vi)(I)-(III) (definition of terrorist organization).

Pursuant to INA § 212(d)(3)(B)(i), the Secretary of Homeland Security or the Secretary of State, in consultation with each other and with the Attorney General, may conclude in such Secretary's sole unreviewable discretion that INA § 212(a)(3)(B) shall not apply within certain limitations. On December 26, 2007, the President signed the Consolidated Appropriations Act, 2008 (CAA), Pub. L. 110-161, 121 Stat. 1844, which amended the Secretaries' discretionary authority under INA § 212(d)(3)(B)(i) and provided that ten groups (listed below) would not be deemed to be "terrorist organizations" under INA § 212(a)(3)(B)(vi)(III) for any activities prior to December 26, 2007. See section 691(a) and (b) of Title VI of Division J. These changes are fully retroactive and effective immediately. See section 691(f). Section 691(b) includes any activities by a named group prior to

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December 26, 2007, but does not cover subsequent activities, and does not necessarily include inadmissibility provisions that do not have "terrorist organization" as an element. As a result, an exercise of the Secretary's exemption authority could be warranted in certain cases, necessitating careful review.

As of the date of this guidance, the Secretary has approved the following categories of activities for exemption consideration:



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Procedure

If your office has any detained cases involving aliens with administratively final orders of removal tied to NS charges or bars, consult with your local Office of the Chief Counsel in order to complete the attached Checklist **prior to any planned removal**. Follow the instructions at the bottom of the Checklist form. If all answers in the checklist are in the affirmative, send electronic copies of the forms described in the attached Checklist to the National Security Law Division (NSLD) mailbox for tracking and additional review.

As noted above, further guidance will be provided regarding non-detained NS cases, cases currently in immigration proceedings, and cases being referred to USCIS.

These procedures are effective April 24, 2008. This memorandum is intended solely for the guidance of DHS personnel in the performance of their duties. 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 individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Attachments:
Checklist
Referral Sheet

**CHECKLIST FOR
DETAINED FINAL ORDER NATIONAL SECURITY CASES**

To be completed by DRO Field Office in consultation with their local Office of the Chief Counsel:

- | | Yes | No |
|--|--------------------------|--------------------------|
| Did the alien attempt to apply for any relief, protection, or benefit? | <input type="checkbox"/> | <input type="checkbox"/> |
| Was the alien denied, or barred from initially applying for, the relief, protection, or benefit? | <input type="checkbox"/> | <input type="checkbox"/> |
| Was relief, protection, or a benefit denied, or the application barred, <u>solely</u> on the basis of national security issues? | <input type="checkbox"/> | <input type="checkbox"/> |

If all of the answers to this Checklist are "Yes:"

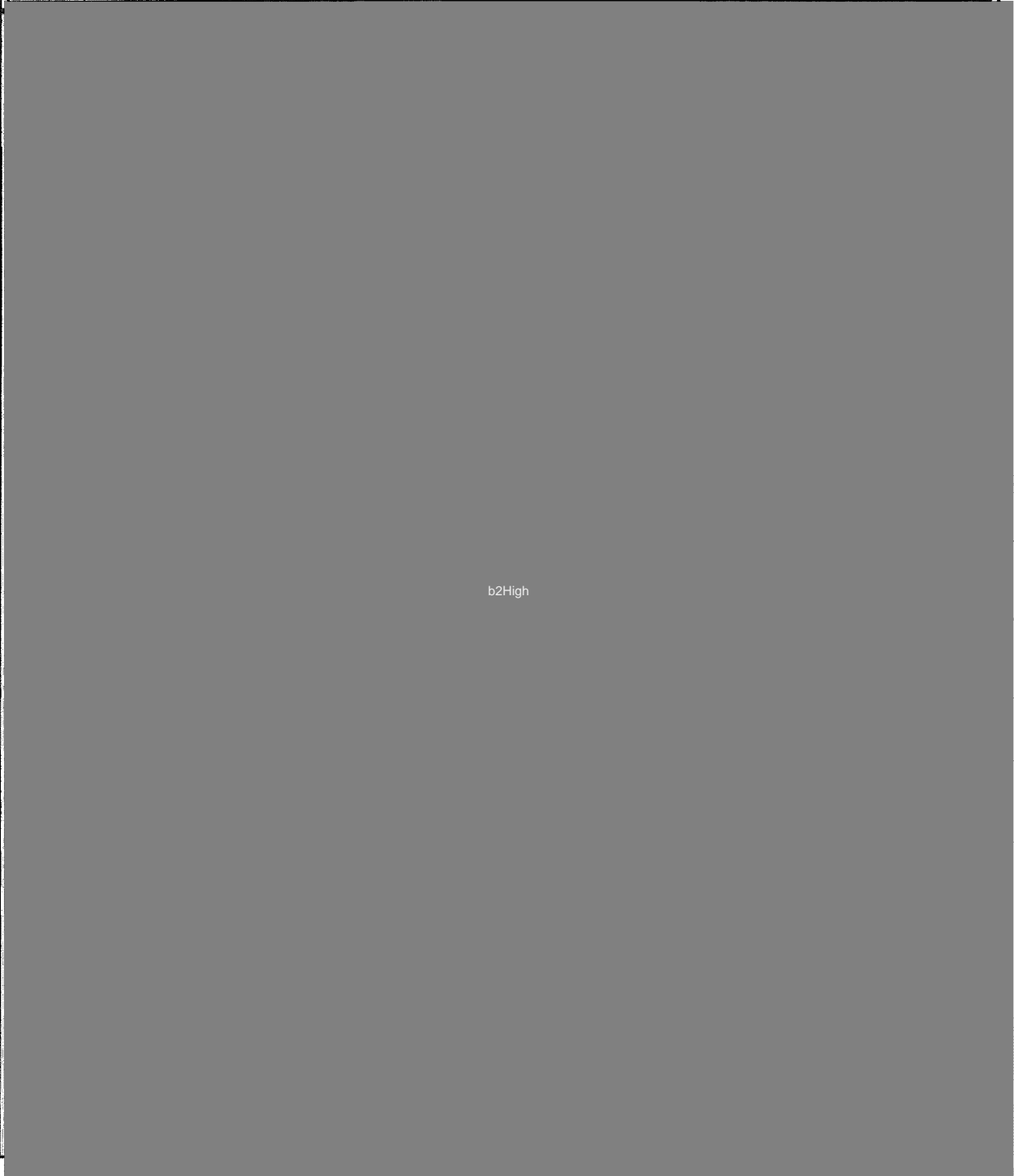
(1) DRO, in consultation with their local Office of the Chief Counsel, should determine whether to (1) place the removal of alien on hold, (2) cancel removal, or (3) extend the travel itinerary

(2) The attached Referral to NSLD sheet must be completed by the Office of the Chief Counsel

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REFERRAL TO NSLD

[Potential Exemption under INA § 212(d)(3)(B)(i)]



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