



Homeland Security

SEP 17 2007

MEMORANDUM FOR: Officers in Charge

THROUGH: AFOD: [REDACTED] b6,b7c
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FROM: [REDACTED] b6,b7c
[REDACTED] b6,b7c
Field Office Director

SUBJECT: Post Order Custody Reviews Responsibilities and Guidance

This memorandum is to express my concerns with respect to the timeliness and completeness of Post Order Custody Review(s) cases. The FOD is responsible for assuring that PO CR cases are reviewed and completed in a timely manner and in compliance with current regulations. It is imperative that all OIC's within the Field Office ensure timely completion of the legally mandated reviews.

The Supreme Court decision in *Zadvydas v. Davis* limited the Agency's authority to continue detention of aliens beyond the 90 day removal period and established procedures for the review of all final order custody cases. The Headquarters Custody Determination Unit (HQCDU) is responsible for making custody decisions for detained aliens with final orders of removal, who have not been removed upon the expiration of the removal period or within a reasonable time frame.

DRO's standards for detention or release of aliens with a final order of removal are set forth in 8 CFR 241.4. This section provides automatic administrative custody review procedures for aliens who are the subject of an administrative final order of removal. DRO provides custody reviews pursuant to 8 CFR 241.13 or 8 CFR 241.14 for all aliens detained post-final order for 180 days, unless a case is in a failure-to-comply (FTC) status. The Immigration and Nationality Act (INA), Section 241 (a)(1)(C) provides for the suspension of the removal period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the aliens departure.

In an effort to streamline and standardize PO CR case preparations within the field office, the following procedures will be executed timely to ensure compliance; additionally, a Record of Action form will be placed in all PO CR files, annotating all case work conducted by the case officer.

- Day 1---30, serve detainee with I-229A, Instruction Sheet, and submit a complete travel packet to consulate office—ensure form I-217 is properly filled out;
- Day 30---60, serve notice of file review and provide detainee/attorney with PO CR page 5 questionnaire with return due date. The page 5 questionnaire is used by HQCDU in determining their custody decisions and the form needs to be properly completed;
- Day 60---75, request assistance from HQTU if travel document has not been obtained; (Refer to Memo: Request for Assistance in Obtaining Travel Documents, dated 08/21/2003)
- Day 75-- 80, The PO CR Worksheet is forwarded to OIC for review;
- Day 80—85, corrections made and PO CR forwarded to FOD;

Post Order Custody Reviews Responsibilities and Guidance

- Day 85—90, FOD signs POCR Worksheet;
 - Continued Detention Decision must be signed by FOD NLT day 90--All field level decisions to continue detention must clearly state why the **detainee poses a threat to the community, is a significant flight risk, or both;**
 - Release Decisions must be signed by FOD NLT day 90.
- Update DACS POCR, ZREL, and COMD Screens;
- Scan POCR worksheet and Detain/Release Custody Decision Notice and email to HQCDU.
- Day 170, memorandum from FOD to HQCDU with updated case information;
- Day 170—180, detainee served with Continue Detention Notice with advisement that custody jurisdiction transferred to HQCDU;
- Unless the alien has a judicial stay or is a Failure to Comply (FTC) case, custody authority will be transferred to HQCDU NLT 180 days from POCR control date;
- Scan & Email the 90 day POCR Worksheet and 180 day update case information memorandum signed by the FOD to HQCDU;
- HQCDU issues Continue Detention Notice or Release Notice on detainee's case.
- If HQCDU serves a Decision to Continue Detention on the alien, the field office is responsible for updating HQCDU in memo format NLT 90 days from the date of that decision with information pertinent to the alien's case, including a report of continuing travel document acquisition efforts.

On case situations where detainee(s) refuses to cooperate, additional steps must be taken to document the detainee's failure to comply status and to document the suspension of the removal period until the detainee comes back into compliance status. Prior to the suspension of the removal period, the following factors need to present:

- Detainee served with form I-229A and Instruction Sheet—detainee fails to comply;
- Detainee given an opportunity to comply;
- Detainee subsequently served with second form I-229A and Instruction Sheet—detainee fails to comply;
- Detainee served Failure to Comply Notice signed by FOD.

Once the FTC Notice is signed by the FOD, the removal period is suspended; however, the 90 day POCR Worksheet must still be timely submitted to the FOD for signature. The FTC cases will remain under FOD jurisdiction until the detainee comes back into compliance. Once the detainee is back into compliance, POCR procedures are reinstated.

The Deportation Officer assigned to prosecute the FTC case will create a prosecution work folder and start annotating detainee's failure to cooperate actions on Memorandum of Investigation G-166c. On Aggravated Failure to Comply Cases, the Prosecution Officer will refer the cases to the AUSA and all accepted or declined cases will be entered into TECS.

Attached are POCR Timeline Worksheets, Record of Action Form, and the contact numbers for the Headquarters Custody Determination Unit that should be helpful in preparing the POCR cases.

90 Day POCR Checklist

Order of documents to be placed in the plastic folders.
No need to send the A-file

Front to back;

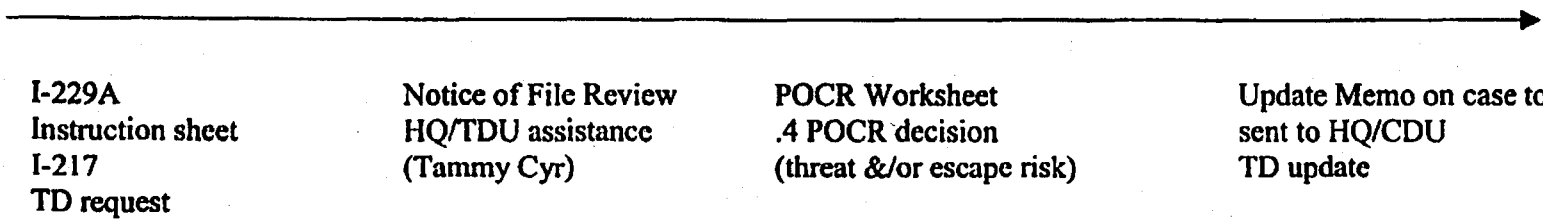
1. POCR worksheet (completely filled out, date TD requested, disciplinary issues etc etc)
2. I-229(a)
3. Instruction sheet to detainee regarding removal
4. Notice to alien of Custody review
5. Proof of service, signed by officer
6. Memo with recommendation of release or continued Detention
7. OSUP (I-220B) and addendum - only if recommending release.

POC Timeline:

Final Order
Custody Date
"Control Date"

Jurisdiction now with
HQ/CDU for .13
POCR review

Day 1.....Day 30.....Day 60.....Day 90.....Day 180



Cases w/Stays: While the Stay is pending, do 90 review on .4 and then annual reviews thereafter as long as Stay in effect. Once Stay is lifted, the POCR clock starts again and a new POCR (241.4) review will need to be completed at ay 90. And forwarded to HQ/CDU for 241.13 review on day 180.

FTC: Serve I-229A and Instruction sheet MONTHLY, until alien complies. Contact AUSA for possible prosecution. FTC cases stay a field. Complete POCR worksheet and issue FTC decision by day 90.

BT-ORDER CUSTODY REVIEW (POCR) TIMELINES

COMPLIANT

PCD (0 DAYS)	Serve I-229 & Instructions (specifically indicating what subject needs to do to assist with obtaining TD)
45 DAYS	Serve 90-day POCR notice
75 DAYS	Send HQ TD assistance request
80 DAYS	Complete 90-day POCR
90 DAYS	Serve 90-day POCR decision
180 DAYS	Send 90-day POCR worksheet, decision, and update memo to HQ/CDU for 180-day POCR
FUTURE	Send update memo to HQ/CDU when circumstances change, or at a minimum every 90 days, for future reviews until subject is removed or released from custody

FAILURE TO COMPLY

PCD (0 DAYS)	Serve I-229 & Instructions (specifically indicating what subject needs to do to assist with obtaining TD)
30 DAYS	Serve I-229 & Instructions if subject is still non-compliant
45 DAYS	Serve 90-day POCR notice
60 DAYS	Serve I-229 & Instructions if subject is still non-compliant
75 DAYS	Send HQ TD assistance request
80 DAYS	Complete 90-day POCR
90 DAYS	Serve 90-day POCR decision; also serve I-229 & Instructions if subject is still non-compliant
FUTURE	No further reviews are due until subject becomes compliant; case should be presented for prosecution as soon as possible; as long as subject remains non-compliant, a new I-229 and Instruction Sheet should be served every 30 days and a new Failure to Comply Notice should be served every 90 days.

STAY OF REMOVAL

PCD (0 DAYS)	Serve I-229 & Instructions (specifically indicating what subject needs to do to assist with obtaining TD)
45 DAYS	Serve 90-day POCR notice
80 DAYS	Complete 90-day POCR
90 DAYS	Serve 90-day POCR decision
FUTURE	Annual reviews should be conducted at the field level until the stay is lifted, subject then falls under the Compliant or Failure to Comply category

*It should be noted that travel document follow-ups should be conducted at a minimum of every 30 days for all removable aliens

HQCDU Fax #: (202) 732-2979

**Chief,
Custody Determination Unit**

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