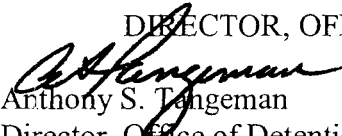


U.S. Department of Homeland Security

425 I Street NW
Washington, DC 20536

MAY 12 2003

MEMORANDUM FOR REGIONAL DIRECTORS
INTERIM DIRECTORS, ENFORCEMENT
DIRECTOR, OFFICE OF INVESTIGATIONS

FROM: 
Anthony S. Tangeman
Director, Office of Detention and Removal
Bureau of Immigration and Customs Enforcement

SUBJECT: Supplemental Guidance: Accepting Delivery of Final Order Aliens

This memo supplements my memo of May 1, 2003 titled "Accepting Delivery of Final Order Aliens" and clarifies the guidance. Specifically, this memo clarifies the last sentence which provided that bond agents "must be notified that delivery of an alien to an office other than as directed by the demand shall constitute a breach of the bond contract."

The guidance contained herein directly supports Detention and Removal's strategic objective to promote public safety and national security by ensuring the departure of all removable aliens from the United States. According to the bond contract (I-352) an obligor must surrender the alien at a specific time and location or face a total breach of the bond. However, under certain conditions outlined in this memo, surrendering aliens in deviance from the demand letter may reduce the amount of the breach. This encourages bond obligors to surrender a greater number of aliens than under previous conditions and further impedes the growth of the absconder population.

If a demand letter has been sent, the timely surrender of an alien to an office different than the location specified will result in a breach unless the place of delivery has been approved and coordinated by the office initiating the demand.

If an alien is surrendered untimely (after the specified date), either to the location specified in the demand or different location approved and coordinated by the office initiating the demand, ICE will mitigate the breach to the obligor. For mitigation purposes the bond will be completed

and the I-323 (notice of breach) will be annotated with the date the alien was surrendered and the percentage of mitigation entitled, so the Debt Management Center (DMC) can bill accordingly. The amount of mitigation depends on how long after the notice of breach (I-323) the obligor surrenders the alien:

< 31 Days from Demand	66%
Day 31 – Day 60	50%
Day 61 – Day 90	30%
After 91 days	no mitigation

Often an alien is surrendered when a bond breach appeal is pending with the Administrative Appeals Office (AAO). Under these circumstances, the date the appeal was filed will be used to mitigate the breach.

On cases for demands for interview/hearing (no removal order) the alien must be presented to the ICE field office that made the demand, unless prior arrangements are approved by that office. Bonds for such cases delivered to a different location without prior approval will be considered breached.

Once the office maintaining the A-File is notified that the alien is in custody by the receiving ICE office, they will take any required action with the bond (i.e., cancellation, rescission, or completion) and transfer the file to the custodial ICE office.

Supporting Documents

U.S. Department of Homeland Security

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Washington, DC 20536

MAY 1 2003

MEMORANDUM FOR REGIONAL DIRECTORS
INTERIM DIRECTORS, ENFORCEMENT
DIRECTOR, OFFICE OF INVESTIGATIONS

FROM:



Anthony S. Cingeman
Director, Office of Detention and Removal
Bureau of Immigration and Customs Enforcement

SUBJECT: Accepting Delivery of Final Order Aliens

Effective immediately, all Immigration and Customs Enforcement (ICE) field offices are directed that any alien who presents himself, or is presented by any bonding agent, Federal or State law enforcement agency, or any other entity, as being subject to an administratively final order of removal, must be detained and the immigration status of the alien verified. Under no circumstances shall ICE field offices refuse to verify the status of any alien or direct the alien or custodial entity to another office or to return on another date.

Once the identity of the alien is established, and the subject is found to have an administratively final order of removal, the field office shall accept custody of the alien and the disposition of the case shall be governed by ICE policy and procedures. Any questions regarding the finality of an order, or other questions regarding the enforceability of an order, should be directed to local counsel.

The custodial entity should be requested to remain at the field office until the identity and immigration status of the alien is verified and the alien is accepted into ICE custody. In addition, bond agents must be advised that delivery of an alien to an office other than as directed by the demand shall constitute a breach of the bond contract.

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Bail bond agents: New fugitive immigrant policy worse

By JULIA MALONE
Atlanta Journal-Constitution Staff Writer

WASHINGTON -- The Department of Homeland Security's new policy of accepting custody of fugitive immigrants at field offices nationwide may actually worsen the problem of apprehending them, bail bond agents said Wednesday.

"If they hadn't done anything, it would have been better," said Anthony Appello, who directs bail recovery efforts for Capital Bonding Corp., the company that has bailed out the greatest number of immigrants from detention nationwide.

The new directive says that while any field office will accept a fugitive, the bond will still be considered breached unless the fugitive is returned to the office that originally issued the warrant.

Most of Capital's clients, like the vast majority of all immigrant defendants who are not detained, disappear when their final deportation order is issued. Typically, immigration bonds are about \$7,500, although some are as high as \$50,000.

Capital Bonding lawyer Douglas Wood fired off a note to the federal agency asking, "What possible incentive is there for a bond company to incur the expense of locating and surrendering an alien when they know that (the government) is still going to claim that it breached the bond?"

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Federal immigration authorities acknowledge that the number of so-called "absconders" from deportation is a major problem that is growing by the month.

In December 2001, when the government first announced it would tackle the problem, the list of these fugitives had 314,000 names. By last month, it was up to 389,000.

The new bureau of Immigration and Customs Enforcement (ICE), which is part of Homeland Security, announced its new policy on turning in absconders last week.

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After two newspapers reported that the Philadelphia Immigration Office had refused to accept a fugitive offered by a bond recovery agent because the defendant was wanted by the Houston office.

During that same period, a Florida recovery agent was told by the Miami Immigration office not to attempt to return 30 fugitives because of a lack of bed space at its Krome detention center.

Anthony S. Tangeman, director of detention and removal for the immigration enforcement bureau, instructed field offices Thursday to immediately accept any person subject to final deportation orders. However, the directive's last line contained the language on bond forfeiture.

Before the Tangeman memo, Capital Bonding officials said, some immigration offices had accepted bail jumpers wanted elsewhere and canceled the bonding company's financial obligation.

Homeland Security spokesman Michael Gilhooly said the new policy was issued "because as a law enforcement agency, we should always be ready to take into custody people who are wanted by the agency. We are in the business of removing illegal aliens, and if an absconder is presented to us, we will take the appropriate action outlined in last week's policy memo."

"That having been said, however, the contract with the surety (bond) companies is still legal and still in effect," Gilhooly said, adding that the bond companies "still have a contractual obligation to produce the individual at the office issuing the demand."

The spokesman said that "if those surety companies want to talk to us, we are certainly willing to have a conversation with them directly."

Wood responded that "technically, they are correct" about the contract.

The bond company lawyer, a former lawyer for the federal immigration service, said the government's position is "evidence that they are more interested in getting the money from the breached bonds than getting the aliens who have been ordered for removal."

Capital Bonding, among other companies, is disputing attempts by the government to collect much of the more than \$30 million in forfeited bonds. Federal officials have consistently stated that the object of the bonds is not to raise revenues.

Even so, the immigration service is allowed to keep 80 percent of the bond forfeitures it collects to support its detention and removal department. In the last two years, the agency has collected \$20 million.



GENERAL TERMS AND CONDITIONS

The express language of the bond contract shall take precedence over any inconsistent policies or statements. Federal law shall apply to the interpretation of the contract, and its terms shall be strictly construed.

Provided it has the concurrence of the government, a surety may re-bond the alien at any time and at no expense to the government, provided it does not change the amount of the bond. Cancellation of a bond issued as a delivery bond shall occur upon any of the following, provided they occur prior to the date of a breach: INS taking the alien back into its custody; deportation/exclusion/removal of the bonded alien; issuance of a new delivery or voluntary departure bond on the bonded alien; grant of permanent residence to the bonded alien; notice of the detention of the bonded alien for 30 or more days pursuant, or prior, to a conviction by local, state, or federal authorities; termination of deportation/removal proceedings (but not administrative closure or stay of such proceedings); death of the bonded alien; valid proof of the bonded alien's voluntary departure; or other circumstances as provided by statute or regulation. Cancellation for these reasons is automatic, and any subsequent appearance demand, or attempt to breach the bond, is null and void. The bond will not be canceled solely because the bonded alien is detained for less than 30 days by any local, state, or federal government agency. Execution of a voluntary departure bond for an alien cancels any existing delivery bond posted on behalf of the same alien, except in the circumstance when an immigration judge grants voluntary departure at the conclusion of a proceeding, and the alien appeals the finding of removability. Nothing in this contract shall affect the obligor's right to raise any defense to a bond breach in a timely administrative appeal. INS shall notify the obligor of a demand to produce the alien, the breach or cancellation of a bond, and any demand for payment of a bond. Paragraph seven of the settlement in AMWEST SURETY v. RENO, No 93-3256 JSL (Shx)(C.D. CA) requires that INS send a copy of any new or amended Notice to Appear or amended Order to Show Cause to the obligor. INS is not required to give the obligor notice of any other actions related to the bonded alien's immigration court proceedings. No demand to produce the bonded alien for deportation/removal shall be sent less than three days prior to sending notice to the bonded alien.

A delivery bond is breached when in response to a timely demand, the obligor either fails to produce the alien at the location specified in that demand. Except for good cause shown, this location shall be the District in which either removal/deportation proceedings are pending, or in which the Immigration Court issued a final order of removal/deportation. INS shall send notice of a breach of the bond to the obligor on Form I-323, Notice-Immigration Bond Breached, at the address of record. A voluntary departure bond is breached when the obligor fails to present valid proof that the bonded alien departed the United States on or before the date specified in the order granting voluntary departure within 30 days of that date. INS regulations provide that upon notification of a breach, the obligor has 30 days in which to file an administrative appeal or motion for reconsideration of the breach. A breach shall be administratively final if not appealed within this period. No Form I-323 shall be sent to the obligor more than 180 days following the date of the breach, and any notice sent more than 180 days after the date of the breach shall be unenforceable. The date of the breach for a delivery bond is the surrender date specified in the demand. For a voluntary departure bond, it is the 30th day after the date by which the alien was to depart the United States. Failure to send a Form I-323 within 180 days shall have no effect on the status of the bond; i.e., the bond shall remain in full force until and unless properly canceled. In the case of a delivery bond, INS may, unless otherwise precluded by law, send a new timely demand to produce the alien and then breach the bond again if the obligor fails to produce the alien.

A public charge bond is breached when the alien accepts any form of public assistance that leads to a final determination under either 8 U.S.C. 1227(a)(5); 8 CFR 237.10 - 237.18 that the alien has become a "public charge" or under 8 U.S.C. 1182(a)(4); 8 CFR 212.100 - 112 that the alien is likely to become a "public charge." As described in those regulations, the only forms of public assistance that can be considered in making a public charge finding are cash for income maintenance purposes or the government's costs for providing the alien with long-term care in an institution. Liability for such breach shall continue to accrue until the alien ceases to accept the public assistance that was considered in the determination that the alien has become or is likely to become a public charge under the statutes and regulations referenced in this paragraph, except that in no event shall the total liability of the obligor exceed the total amount of the bond. INS shall send notice of the breach to the obligor on Form I-323 as described in the paragraph above.

Demands for amounts due under the terms of this bond will be sent to the obligor after a breach becomes administratively final. If the surety or agent of the surety does not make payments within 120 days of the demand for payment, INS will notify the Department of Treasury of such nonpayment. Each co-obligor agrees that, in the event payment is not made within 30 days of the date of the demand for payment, interest, penalty, and handling charges as provided by the statute and regulation will accrue from the date of the first demand, and will be payable as damages hereunder. The statute of limitations that applies to actions for monetary damages from a breached bond is six years from the date of the breach event. (28 U.S.C. 2415)

Any obligation or duty imposed on an obligor by this contract applies equally to all co-obligors.

clock running on the surrender date. Refer any instances in which an obligor attempts to claim mitigation based on a surrender within 30 days of the Notice of Breach to one of the contacts listed at the end of this Memorandum. The amount mitigated depends on how long after the notification date the obligor delivers the alien:

Within 10 days	66%
Within 20 days	50%
Within 30 days	30 %
After 30 days	no mitigation

The paragraph requires that obligors wishing to mitigate their damages "must give the INS office demanding delivery written notice [on a business day] not less than 72 hours before delivering the alien," unless the District Director or his/her designee waives this notice. It is the date of the delivery rather than that of the notice which determines the amount of mitigation, but offices should not delay accepting delivery solely to reduce the mitigation amount. If, however, the expiration of the 72-hour notice period is on a Saturday, Sunday, or federal holiday, INS shall not be obligated to accept delivery until the next business day. Thus, if an obligor gives notice on a (non-holiday) Thursday, INS is not obligated to accept delivery until the following Monday, or Tuesday if Monday were a holiday. If the obligor gives the 72 hours notice, and INS refuses to accept delivery, the obligor shall be entitled to mitigation as if it had delivered the alien on a date 72 hours from the notice.

While mitigation is mandatory, there is also a provision in this paragraph setting forth a District Director's discretionary authority to declare any breached bond cancelled upon a finding of substantial compliance as provided in [Exhibit I of the Settlement]." See discussion below under Exhibit I.

NOTICE OF BREACH

In Paragraph 9. of the Settlement, INS agreed that if it did not send an I-323, Notice - Immigration Bond Breached, to an obligor within 180 days of the date of the breach, "the declared breach shall be stale and unenforceable against the obligor. However, the bond shall remain in full force and effect [provided that no event requiring cancellation has occurred]."

SCHRODE RULE-EXHIBIT A

This rule takes its name from *Schrode v. Rowoldt*, 213 F.2d 810 (8th Cir. 1954). The crux of this rule is that since the Attorney General's statutory authority (8 U.S.C. § 1252(c) at that time) to detain aliens under a final order of deportation expires 180 days after the date of the order, INS has no authority to maintain a delivery bond on the alien after that period expires. Therefore any such bond on which INS has not issued a demand setting a date to surrender for deportation which is within the 180 day period is null and void as a matter of law. Prior to the

CURRENT BOND INITIATIVES

(1) Surrender Regulation:

The final draft of the surrender regulation was sent to the Department of Justice for review on December 16, 2002. On March 4, 2003, a redlined copy of the rule amended by DOJ was unofficially distributed to INS/DHS GENCOU. Changes made by DOJ favor DRO position of not making exceptions for TPS eligible aliens. To date, rule is still pending with the DOJ Office of Legal Policy and INS/DHS has not been contacted by DOJ counsel to agree to changes and move forward with publication. GENCOU (Lisa Batey) is currently amending the rule to reflect changes brought about by the change over to DHS (names, titles, etc.), but DRO and GENCOU have to discuss the more substantive changes recommended DOJ including the issue of TPS eligible aliens. Since most of DOJ's changes agree with DRO's position on issues that GENCOU disagrees with, we are likely to arrive again at an impasse with GENCOU that will have to be decided by the Secretary's office.

Timeline: Unknown. Due to the reorganization, there does not seem to be a protocol or clear chain-of-review established to move issues forward that require joint DOJ/DHS approval. DRO will proactively pursue the issue, the first step being to get GENCOU to take a position on the DOJ recommended changes and create our response.

(2) New bond form I-920:

The Surrender Regulation necessitated the creation of a new bond form. The new form, I-920, requires the obligor to ensure the appearance of the alien for all hearings and interviews without the need of a bond demand being made, essentially changing the bond from a delivery bond to an appearance bond (although demands can still be made). The bond form does not rely on the Surrender Regulation, and is an improvement in bond policy unto itself. Consequently, we are going forward with publication of the I-920 in the Federal Register independent of the surrender Regulation.

Timeline: Should be published in May

(3) Bond Action Team (BAT) (Eliminating backlog of old bonds):

The statement of work and funded G-514 are with procurement, which is seeking bids. An unofficial proposal (not through procurement) for the BAT was submitted by SEI Technologies on 3/19/03. The proposal places the site for the BAT at 800 K Street NW, Washington, DC (Techworld). SEI has provided the names of three retired INS D&R officers as file reviewers: Robert Jacobson, Robert Obenshain and Patrick O'Reilly.

Timeline: The BAT funding has been approved and procurement is seeking bids. One proposal has been received. Expect pass-back from procurement within 3 weeks.

(3) Bond amount calculator program (appropriate bond amounts):

Prototype available on INS Intranet at: <http://calc.ins/bond/> (must use Microsoft Internet Explorer). Still awaiting review/approval by DRO management. After approval, must be sold to Investigations and Border Patrol for use.

Timeline: Current plan is to pilot use of the calculator in conjunction with Border Patrol initiative in June '03. Need concurrence with Border Patrol.

(4) Bond revocation /custody re-determination (to reduce absconder rate) pilot project:

Project to take all aliens into custody at the immigration court following the immigration judge's (not administratively final) order of removal. New custody determinations will be made based on increased flight risk due to adverse IJ decision. In addition to the post-IJ removal order detention pilot, DRO is considering a similar pilot for aliens who are denied asylum and placed into removal proceedings by to see if those aliens who are placed into proceedings by the Asylum Office. The post-hearing detention pilot will be conducted by the Hartford office of the Boston District, and is planned for 120 calendar days. Hartford District informs that locally, EOIR is on board and Hartford is ready to implement when directed, but needs more direction on what to do with detainees, i.e. set new bonds or hold without bond.

Timeline: Can be implemented immediately

Note: An asylum detention pilot is being considered, but has not yet been proposed to Asylum. The impact of any pilot on DRO and Asylum operations and resources have yet to be determined.

(5) Deportation Operations Handbook:

The bond chapter of the Deportation Operations Handbook is being reviewed by GENCOU.

(6) Filing Bond Breach Appeals with Headquarters Bond Office:

On Hold

(7) Going to Cash bonds only:

On hold

OTHER ACTIVITIES:

(1) Capital bonding recently announced it was getting out of the immigration bond business and would stop posting immigration bonds effective March 28, 2003. At the same time, Capital stopped payments to the Service for breached bonds and is suing the Service for its bond practices. In response, HQDRO has notified the field to not take any bonds from Capital, and is working with GENCOU and the DOJ Office of civil litigation to answer Capital's complaint.

DHS will file for dismissal.

(2) **Ranger Insurance** (Aaron Bonding) has been notified that the Service would begin the process to have Ranger removed from the Treasury Department's list of approved sureties due to the \$12M in debt that Aaron/Ranger has accumulated for breached bonds. Ranger is currently negotiating for a settlement of their debt, but so far, their offers have been ridiculously low. Ranger has retained former INS General Counsel Paul Virtue to argue on it's behalf. It is unlikely that we will settle with Ranger, and probable that Ranger will be removed from the T-list. When this happens, Ranger will file suit, and will try to overburden the Service with Discovery requests. We can expect a lot of officer testimony as well.

Capital represents 60% of the entire surety bond market, Ranger 15%. Capital and Ranger's absence will initially cause an increase in detainees (see attached report) and increased lengths of stay, but this is expected to reside as other bond companies step-up to fill the gap left by Capital Ranger and aliens switch to the cash bonds rather than surety bonds.

(3) Administrative appeals Office:

The BCIS has recently decided that appeals of delivery bond breaches are no longer the responsibility of the AAO. As a result, the AAO has stopped reviewing bond breach appeals and the appeals are being shelved. DRO has notified informed the Secretary's office, and GENCOU is preparing a delegation of authority memo granting authority to the BCIS to resume administering bond breach appeals.

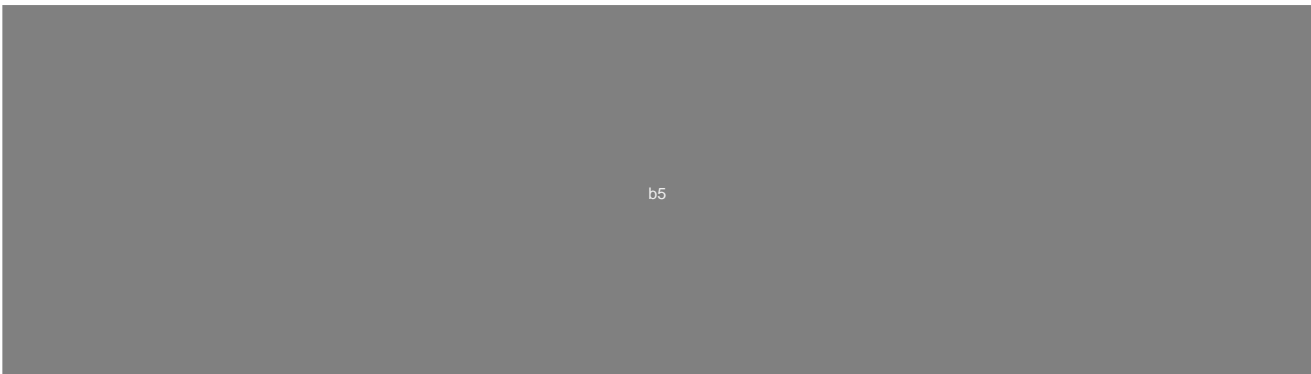
FUTURE POLICY UNDER DEVELOPMENT:



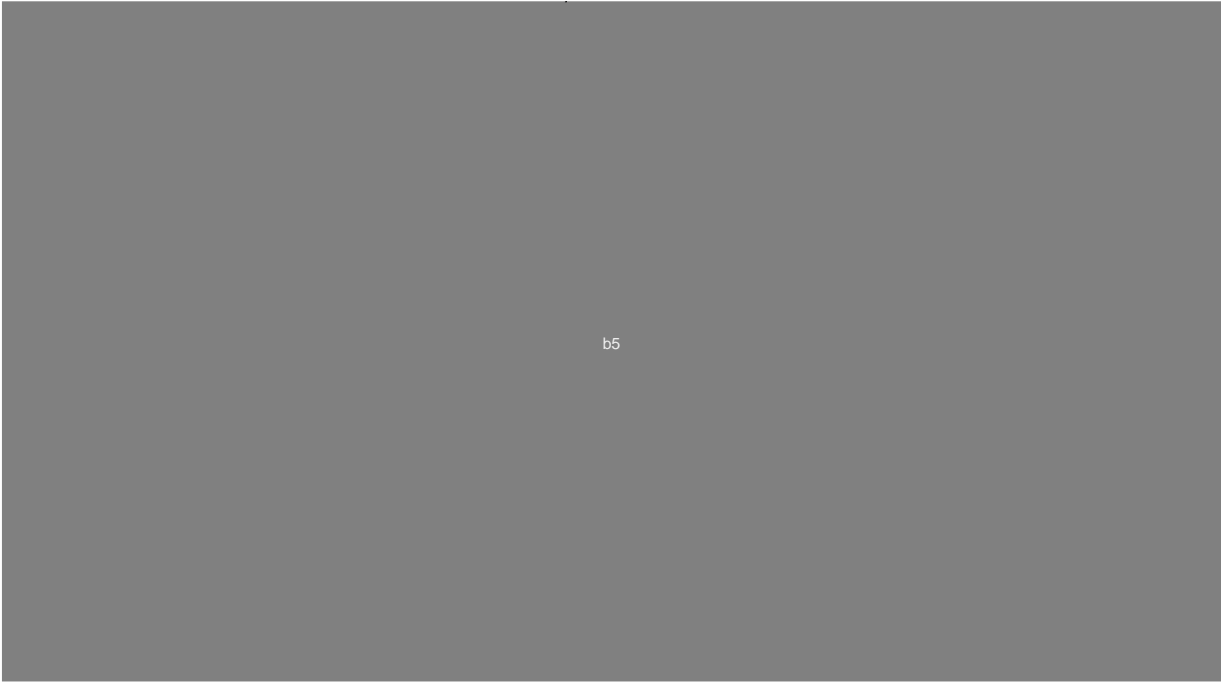
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BOND POLICY QUESTIONS UNDER CONSIDERATION:

AMWEST ISSUES

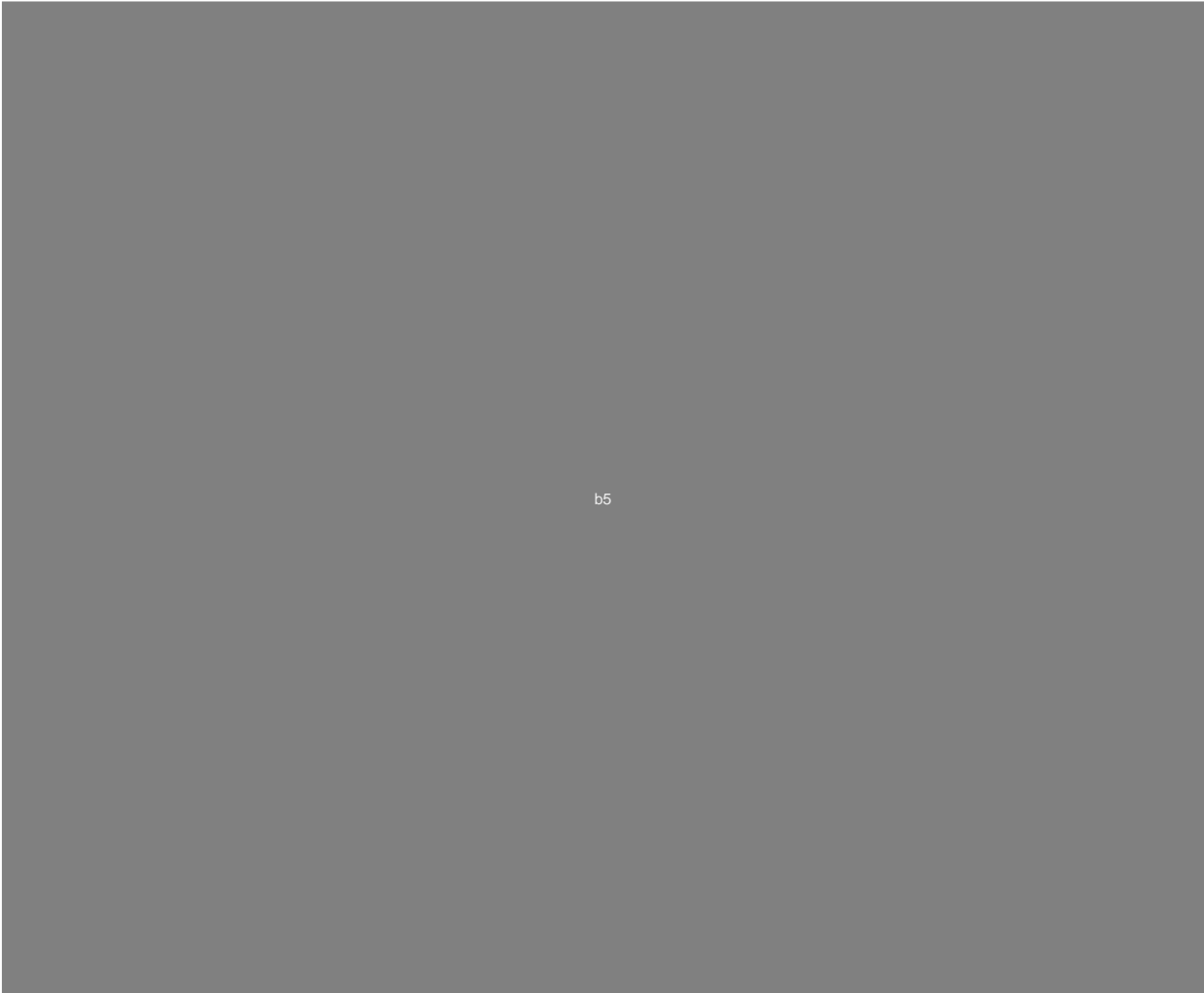


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OTHER BOND ISSUES:



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The current ICE/DRO bond population is 83,770 cases of these 29% are surety bonds with a value of 195.5 million dollars. Surety bond companies owe DHS/ICE 49.2 million dollars of which 25 million are 90 days past due. INS legacy historically did not actively pursue payment from these companies and often settled for 40-50% of the amount owed.

We DHS/ICE are currently addressing issues such as lack of transitional authority for bond breach appeals from DOJ to DHS, the surrender rule, requiring mandatory surrender of the alien, addressing older bonds, along with rewriting the current bond contract.