

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Policy Number 11068.2: **Enhanced Oversight of Custody Determinations for Criminal Aliens Convicted of Multiple Felonies or an Aggravated Felony**

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Superseded: Policy 11068.1: Enhanced Oversight of Level 1 Criminal Alien Releases
Federal Enterprise Architecture Number: 306-112-002

- 1. Purpose/Background.** The purpose of this Directive is to provide guidance requiring additional supervisory controls and U.S. Immigration and Customs Enforcement (ICE) Headquarters oversight of discretionary releases of criminal aliens convicted of multiple felonies or an aggravated felony from Enforcement and Removal Operations (ERO) custody. This Directive applies only to custody decisions within the jurisdiction of ERO.
- 2. Policy.** It is ICE policy to carefully consider, review, and monitor the release of criminal aliens convicted of multiple felonies or an aggravated felony. Deportation Officers must obtain senior level authorization prior to the discretionary release of any such criminal alien. The discretionary release (e.g., bond, parole, or other conditions of release) of any criminal alien convicted of two or more felonies who is not an aggravated felon must be approved in writing by an Assistant Field Office Director (AFOD), Deputy Field Office Director (DFOD), or Field Office Director (FOD).¹ Discretionary release of a criminal alien convicted of an aggravated felony must be approved in writing by a DFOD or FOD.

Releases required by law and custody determinations rendered by a judicial body, including releases pursuant to an order by an immigration judge or federal court, an administrative final grant of relief from removal, an unopposed termination of removal proceedings, or a release subject to the requirements of federal case law, including *Zadvydas v. Davis*, 533 U.S. 678 (2001), do not require additional approval by an AFOD, DFOD, or FOD. Section 5.1 describes the types of mandatory and discretionary releases.

- 3. Definitions.** None.

¹ Such release determinations should be made consistent with the Memorandum from Secretary Jeh Charles Johnson, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants* (Nov. 20, 2014), which directs that, irrespective of whether an alien falls within one of the Department's immigration enforcement priorities:

Absent extraordinary circumstances, or the requirement for mandatory detention, field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness, or who are disabled, elderly, pregnant, or nursing, who demonstrate that they are primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest. To detain aliens in those categories who are not subject to mandatory detention, DHS officers or special agents must obtain approval from the ICE Field Office Director. If an alien falls within the above categories and is subject to mandatory detention, field office directors are encouraged to contact their local Office of Chief Counsel for guidance.

4. Responsibilities.

4.1. **The ERO Executive Associate Director (EAD)** is responsible for ensuring compliance with the provisions of this Directive and selecting members for the ERO Headquarters Review Panel.

4.2. **Deportation Officers** are responsible, through their assigned Supervisory Detention and Deportation Officer (SDDO), for obtaining authorization from an AFOD, DFOD, or FOD prior to the discretionary release of any criminal alien convicted of multiple felonies and authorization from a DFOD or FOD prior to the discretionary release of any criminal alien with an aggravated felony conviction.

5. Procedures.

5.1. Approval for Releases.

1) Deportation Officers:

- a. Prior to the discretionary release of any criminal alien convicted of multiple felonies, the Deportation Officer, through his or her SDDO, must obtain written approval from an AFOD, DFOD, or FOD. Prior to approving such release, the AFOD, DFOD, or FOD should consult with his or her local Office of Chief Counsel, as practicable.
- b. Prior to the discretionary release of any criminal alien with an aggravated felony conviction, the Deportation Officer, through his or her SDDO, must obtain written approval from a DFOD or FOD. Prior to approving such release, the DFOD or FOD should consult with his or her local Office of Chief Counsel, as practicable.
- c. No additional supervisory approval is required prior to the mandatory release of any alien pursuant to an order by an immigration judge or federal court, an administratively final grant of relief from removal, an unopposed termination of removal proceedings, or a release subject to the requirements of federal case law, including *Zadvydas*.

5.2. Case Management.

1) Deportation Officers:

- a. For release of a criminal alien convicted of a multiple felonies, Deportation Officers must document the relevant case and custody actions in the Actions/Decisions screens in the (b)(7)(E) (b)(7)(E). This includes use of the existing *Zadvydas* Actions/Decision for aliens released pursuant to Post-Order Custody Review and due to the inability to obtain a travel document.

- b. Deportation Officers must provide clear release justification(s) in the narrative section of the alien's Record of Deportable/Inadmissible Alien (Form I-213) if a release determination is made during initial processing or in the EARM Case Comments for any subsequent custody decisions.
- c. Deportation Officers must capture custody re-determinations made by the Department of Justice Executive Office for Immigration Review (EOIR) or the Department of Homeland Security, in addition to other relevant Actions/Decisions depending on the facts of the case, in the Actions/Decisions screens in the EARM Case Comments field.
- d. Deportation Officers must regularly monitor released criminal aliens convicted of multiple felonies or an aggravated felony through their conditions of release, including any reporting or other supervision requirements.

5.3 Headquarters Review Panel.

- 1) ICE will establish a Headquarters Review Panel comprised of appropriate senior headquarters and/or field managerial law enforcement officers designated by the ERO EAD or his/her designee, and an appropriate Office of the Principal Legal Advisor manager designated by the Principal Legal Advisor or his/her designee.
- 2) One member of the Headquarters Review Panel will be designated as the Chair by the ERO EAD or his/her designee.
- 3) The Headquarters Review Panel will meet monthly to review the discretionary release decisions for all criminal aliens convicted of felonies specified in the FBI Uniform Crime Reporting definition as "crimes of violence" to ensure compliance with this Directive.
- 4) If the Headquarters Review Panel identifies any anomalies in the report or cases that appear not to satisfy the procedures in this Directive, the Chair of the Headquarters Review Panel will refer the matter to the Assistant Director for Field Operations to address compliance with the pertinent field office.

6. Recordkeeping. ERO will maintain the records related to custody determinations in EARM. These records are temporary, and can be destroyed one hundred (100) years after the end of the fiscal year in which the case closes or the last action is taken. (Enforcement Integrated Database (EID) N1-567-10-4).

7. Authorities/References.

- 7.1. Memorandum from Secretary Jeh Charles Johnson, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants* (Nov. 20, 2014).
- 7.2. ICE Policy No. 11002.1: Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009).

7.3 *Zadvydas v. Davis*, 533 U.S. 678 (2001).

8. **Attachments.** None.

9. **No Private Right.** These guidelines and priorities are not intended to, do 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.



Sarah R. Saldaña
Director
U.S. Immigration and Customs Enforcement