

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Policy Number 11070.1: Visa Waiver Program Removals

Issue Date: February 18, 2016
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Superseded: This Directive and its attached forms supersede Chapter 14-2 of the Detention and Removal Operations Policy and Procedures Manual (DROPPM) and all other policy documents and forms on Visa Waiver Program and Visa Waiver Pilot Program removals issued by U.S. Immigration and Customs Enforcement (ICE) or the former Immigration and Naturalization Service insofar as they pertain to ICE. Additionally, this Directive supersedes local policy guidance, procedures, and forms that are inconsistent with the contained policy, guidance, procedures, and forms.
Federal Enterprise Architecture Number: 306-112-002b

- 1. Purpose/Background.** This Directive establishes ICE policy and procedures for processing and adjudicating removal cases under the Visa Waiver Program (VWP), the former Visa Waiver Pilot Program (VWPP), the Guam-Commonwealth of the Northern Mariana Islands Visa Waiver Program (G-CNMI VWP), and the former Guam VWP, which became the G-CNMI VWP on November 28, 2009 (collectively, “VWP removals”). The VWP allows qualifying citizens, nationals and passport holders of designated countries to travel to the United States for up to 90 days for business or pleasure without first obtaining a visa. *See* Immigration and Nationality Act (INA) section 217. The G-CNMI VWP is a separate visa waiver program that allows eligible nationals of designated countries to travel to Guam or the CNMI for up to 45 days for business or pleasure without first obtaining a visa. INA § 212(l).

Before an alien is admitted under the VWP, in addition to meeting other requirements, he or she must waive their right to review or appeal an immigration officer’s determination as to admissibility at the port of entry and to contest, other than on the basis of an application for asylum, any action for removal. INA §§ 217(b); 212(l)(2). ICE may remove aliens who entered under the VWP and who subsequently violated the terms and conditions of their admission by issuing an administrative removal order without referring the alien to an Immigration Judge (IJ), unless the alien applies for asylum, withholding of removal under INA § 241(b)(3), and/or protection from removal under regulations implementing U.S. obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), 8 C.F.R. §§ 208.16(c) – .18; 1208.16(c) – .18.

U.S. Customs and Border Protection (CBP) introduced the Electronic System for Travel Authorization (ESTA) on August 1, 2008 and implemented it in phases until approval through ESTA became mandatory for VWP travelers on January 12, 2009. Following

implementation of ESTA, CBP also automated the Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Record, for most VWP travelers. CBP completed the I-94W automation for VWP travelers arriving at air and most sea ports of entry on or before July 1, 2012. However, CBP is still issuing the paper Form I-94W for VWP travelers arriving at land borders and some seaports. *See Attachment 1.* The ESTA application contains the waiver of rights text previously found on the Form I-94W.

ESTA is not currently required for G-CNMI VWP travelers. G-CNMI travelers are issued a Form I-94, Arrival/Departure Record, and Form I-736, Guam-CNMI Visa Waiver Information Form.

This Directive applies to all personnel from Enforcement and Removal Operations (ERO), Homeland Security Investigations (HSI) and Office of the Principal Legal Advisor (OPLA) engaged in VWP removal cases. This Directive does not apply to aliens who were conditionally paroled into the United States between the expiration of the VWPP on April 30, 2000, and the enactment of the VWP on October 30, 2000. These aliens should be placed into removal proceedings under section 240 of the INA. This Directive does not apply to cases initiated by CBP. The issuance of removal orders in such cases remain within the scope and responsibility of CBP. No unaccompanied alien children (UAC) will be removed under this Directive. All UAC who ICE seeks to remove must be placed into INA § 240 removal proceedings. 8 U.S.C. § 1232(a)(5)(D).

2. **Policy.** ICE will conduct all VWP removals in an expeditious, uniform, and fair manner, according to the procedures outlined in this Directive and consistent with existing enforcement and removal priorities. ICE will maintain a Record of Proceeding (ROP) for all VWP removal cases. The local ICE Office of the Chief Counsel (OCC) should review all VWP removal orders before their issuance. Due to the phased implementation of ESTA and the Form I-94W automation, ICE officers and agents will seek copies of both the Form I-94W and ESTA application from CBP for all entrants under the VWP after August 1, 2008, to ensure that ICE has enough evidence to support both the administrative removal and any federal court proceedings. For all other VWP entrants, ICE will request a copy of the Form I-94, I-94W or I-736, as appropriate, from CBP. ICE will also coordinate with U.S. Citizenship and Immigration Services (USCIS) if the VWP entrant has a pending Form I-485, Application to Register or Adjust Status, with USCIS as an immediate relative of a U.S. citizen.
3. **Definitions.** The following definitions apply for purposes of this Directive only.
 - 3.1. **Alien File (A-File).** Administrative file composed of relevant immigration forms and documents related to an individual's immigration history and labeled with bar codes indexed in the Central Index System (CIS) and tracked by the National File Tracking System (NFTS). Temporary A-Files, also called T-Files, are created when the original A-File is unavailable.
 - 3.2. **Application for Asylum.** An application for relief from removal under INA § 208, based on a fear of persecution on account of race, religion, nationality, membership in a

particular social group, or political opinion. The term will also include an application for withholding of removal under INA § 241(b)(3) or protection under the CAT implementing regulations. By law, no claims for asylum can be made in the Commonwealth of the Northern Mariana Islands before January 1, 2020, but withholding and CAT claims may be made. *See* INA § 208(e); 48 U.S.C. §§ 1806(a)(2) and (a)(7); 8 C.F.R. §§ 208.1(a), 208.2(c)(1)(vii), 208.5.

- 3.3. District Director.** As defined in 8 C.F.R. § 1.2, a District Director means, to the extent that authority has been delegated to such official, a Field Office Director, a Special Agent in Charge, or such an official in an acting or delegated capacity. For VWP removals, the District Director who has jurisdiction over the location where the alien is found determines whether the alien will be removed. Deciding official as used in the VWP removal forms is synonymous with District Director as defined here.
- 3.4. Electronic System for Travel Authorization (ESTA).** Pursuant to INA § 217(a)(11), an Internet-based CBP system implemented on August 1, 2008, that determines, through the collection of biographical and other information, including the same information previously entered on the paper Form I-94W, the preliminary eligibility of visitors to travel to the United States prior to their embarking on such travel. The ESTA is not a determination that the alien is admissible to the United States. 8 C.F.R. § 217.5(f)(1).
- 3.5. Form I-94.** The Arrival-Departure Record (either in electronic or paper format) that the Department of Homeland Security (DHS) issues to many nonimmigrant aliens upon arrival in the United States. Beginning on April 30, 2013, CBP ceased issuing a paper form of the I-94 for nonimmigrant aliens arriving by air and at most seaports.
- 3.6. Form I-94W.** The Nonimmigrant Visa Waiver Arrival/Departure Record that arriving aliens complete to apply for admission to the United States under the VWP. The paper Form I-94W is no longer required for nonimmigrant visitors traveling under the VWP by air or sea (at most, but not all seaports) and who have obtained a travel authorization via the ESTA. The paper Form I-94W is currently required at land borders and at some sea ports of entry.
- 3.7. Form I-213.** The Record of Deportable/Inadmissible Alien is the record that the DHS arresting officer/agent completes after interviewing the alien. The Form I-213 contains biographical data, immigration history, any criminal arrest or conviction history, and a narrative describing the circumstances of the alien's encounter with DHS.
- 3.8. Form I-736.** The CBP G-CNMI Visa Waiver Information Form that must be completed by every nonimmigrant visitor not in possession of a visitor's visa who is a citizen of one of the eligible countries enumerated in 8 C.F.R. § 212.1(q) and is applying to enter and remain on Guam or the CNMI for a maximum stay of 45 days. All aliens applying for admission under the G-CNMI VWP must possess a completed Form I-736 in addition to the Form I-94.

- 3.9. Issuing Officer.** Any ICE officer listed in 8 C.F.R. § 239.1(a) as authorized to issue a Notice to Appear to initiate removal proceedings before an IJ.
- 3.10. VWP Notice of Intent to Issue a Final Administrative Removal Order (NOI).** Form notifying the alien of DHS's intent to remove the alien under an administrative VWP removal order.
- 3.11. Officer/Agent.** Any immigration officer as defined in 8 C.F.R. § 1.2 who is an ICE employee.
- 3.12. Record of Proceedings (ROP).** The ROP is a permanent record of the administrative removal proceeding. The ROP must include all documents, evidence, and database records that support the removal as described in section 5.9.
- 3.13. Serving Officer.** The officer/agent who serves any of the VWP removal documents on the alien. The Serving Officer may be any ICE immigration officer as defined in 8 C.F.R. § 1.2 and authorized under INA § 287
- 3.14. Visa Waiver Program (VWP).** A program permitting foreign nationals from designated countries who meet certain statutory requirements to be admitted into the United States without a visa as nonimmigrant visitors for business or pleasure. Unless otherwise noted, the term includes all of the following: the VWP under INA § 217, the former Visa Waiver Pilot Program (VWPP) (expired April 30, 2000), the G-CNMI VWP under INA § 212(l), and the former Guam VWP (replaced by the G-CNMI VWP on November 28, 2009).
- 3.15. Visa Waiver Program Removal.** An administrative removal process that results in an administrative removal order against an alien who entered the United States under a VWP.
- 3.16. Witnessing Officer.** An officer/agent other than the Serving Officer who witnesses the alien's refusal to sign the Notice of Intent to Issue a Final Administrative Removal Order, Final Administrative Removal Order, or Notice to Alien Ordered Removed/Departure Verification.
- 4. Responsibilities.**
- 4.1. The District Director,** or his or her designee, is responsible for:
- 1) Reviewing all evidence in the ROP and the draft VWP Final Administrative Removal Order and determining whether the record establishes removability;
 - 2) Certifying the ROP's authenticity; and
 - 3) Issuing the VWP Final Administrative Removal Order.

4.2. The Issuing Officer is responsible for:

- 1) Reviewing the draft Notice of Intent to Issue a Final Administrative Removal Order (NOI), along with supporting documentation, to ensure the alien is subject to removal as charged; and
- 2) Issuing the NOI.

4.3. The Serving Officer is responsible for:

- 1) Serving any of the VWP removal documents on the alien;
- 2) Explaining to the alien all forms associated with this removal process, including the allegations set forth by DHS;
- 3) Explaining to the alien the limited grounds for relief and the amount of time the alien may have to provide a response; and
- 4) Documenting and investigating any claims, except applications for asylum, presented by the alien to contest removability.

4.4. The Witnessing Officer is responsible for documenting any instance where the alien refuses to sign any of the VWP removal documents.

5. Procedures.

5.1. Criteria for VWP Removals. Before starting the VWP removal process, the officer/agent encountering the alien must consider whether the alien meets these criteria:

- 1) **Alienage.** At the outset, there must be a determination of alienage. The investigation must disclose that there is clear and convincing evidence that the subject is an alien; that is, neither a citizen nor a national of the United States. Any claims to U.S. citizenship by an individual placed in the VWP removal process must be promptly assessed consistent with agency policy.
- 2) **Immigration status (not a lawful permanent resident, refugee, or asylee).** The alien is not a lawful permanent resident (LPR), refugee, or asylee, as confirmed by a review of DHS records. The removal of LPRs, refugees, and asylees with a prior VWP admission should proceed in accordance with INA §§ 235, 239, 240, and 241, as appropriate. If the alien has an application to adjust status to permanent residence (Form I-485) pending before USCIS on the basis of an immediate relative petition and that adjustment application was filed while the alien was still in valid VWP status, VWP removal should not be pursued unless and until USCIS has issued a decision denying the alien's application. If the alien has an application to adjust status to permanent residence (Form I-485) pending with USCIS on the basis of an immediate relative petition and that adjustment application was filed when the alien

was no longer in valid VWP status, the District Director should use his or her discretion in deciding whether to pursue removal consistent with Departmental guidance.

- 3) **Admitted to the United States pursuant to the VWP.** There must also be a determination that the alien was admitted to the United States pursuant to the VWP. The Form I-94W or ESTA records are the best evidence as they reflect that the alien executed the waiver of rights. Efforts should be made to obtain the Form I-94W or ESTA record, as appropriate, in accordance with Attachment 1. In the absence of these records, other DHS records, including TECS and US-VISIT, will corroborate the alien's manner of entry. If there are questions as to the alien's identity (e.g., the alien entered the country using a fraudulent identity), the local OCC should be consulted after all reasonable steps are taken to determine the alien's true identity and nationality. If the evidence appears to be insufficient to establish the manner of entry, a decision should be made in consultation with the local OCC whether to continue with VWP removal or issue a Notice to Appear and commence INA § 240 removal proceedings.
 - a) The officer/agent will request a copy of the Form I-94W and/or ESTA application from CBP for all aliens who entered the United States under the VWP. See Attachment 1 for guidance on what documentation is required depending on the alien's entry date and method of arrival.
 - b) To request the Form I-94W, the officer/agent will send an e-mail request to I94-REQUEST@cbp.dhs.gov. After performing a database search (TECS, US-VISIT, etc.) for the following information, the officer/agent will include in the request the alien's name, date of birth, admission number, departure record number, VWP date of entry, and port of entry (if known).
 - c) To request the ESTA application, the officer/agent will send an e-mail to ESTA@cbp.dhs.gov. After doing a database search (TECS, US-VISIT, etc.) for the following information, the officer/agent will include in the request the alien's name, date of birth, admission number, departure record number, VWP date of entry, and port of entry (if known).
- 4) **Violated the terms of admission.** The alien, after having been admitted to the United States, is found to be in violation of any provision of INA § 237, to include remaining in the United States longer than authorized or being inadmissible at the time of entry.

5.2. Criteria for G-CNMI VWP Removals. Before starting the G-CNMI VWP removal process, the officer/agent encountering the alien must consider whether the alien meets these criteria:

- 1) **Alienage.** At the outset, there must be a determination of alienage. The investigation must disclose that there is clear and convincing evidence that the subject is an alien; that is, neither a citizen nor a national of the United States.
- 2) **Immigration status (not a lawful permanent resident, refugee, or asylee).** The alien is not a lawful permanent resident, refugee, or asylee. DHS records must corroborate the alien's immigration status. The removal of LPRs, refugees, and asylees with a prior VWP admission should proceed in accordance with INA §§ 235, 239, 240, and 241, as appropriate. If the alien has an application to adjust status to permanent residence (Form I-485) pending with the USCIS on the basis of an immediate relative petition and that adjustment application was filed while the alien was still in valid VWP status, VWP removal should not be pursued unless and until USCIS has issued a decision denying the alien's application. If the alien has an application to adjust status to permanent residence (Form I-485) pending with USCIS on the basis of an immediate relative petition and that adjustment application was filed when the alien was no longer in valid VWP status, the District Director should use his or her discretion in deciding whether to pursue removal consistent with Departmental guidance.
- 3) **Admitted to Guam or the CNMI pursuant to the G-CNMI VWP.** There must also be a determination that the alien was admitted to Guam or the CNMI pursuant to the G-CNMI VWP. The Form I-736 record is the best evidence as it reflects that the alien executed the waiver of rights. Aliens traveling under G-CNMI VWP are also issued a Form I-94. Note that ESTA does not currently apply to aliens traveling under the G-CNMI VWP. Efforts should be made to obtain the I-736 record and Form I-94. In the absence of these records, other DHS records, including TECS and US-VISIT, will corroborate the alien's manner of entry. If there are questions as to the alien's identity (e.g., the alien entered Guam or the CNMI using a fraudulent identity), the local OCC should be consulted after all reasonable steps are taken to determine the alien's true identity and nationality. If the evidence appears to be insufficient to establish the manner of entry, a decision should be made in consultation with the local OCC whether to continue with VWP removal or issue a Notice to Appear and commence INA § 240 removal proceedings.
 - a) The officer/agent will request a copy of the Form I-94 and Form I-736 from CBP for all aliens who entered the United States under the G-CNMI VWP. The officer/agent will send a request by e-mail to I94-REQUEST@cbp.dhs.gov. After doing a database search (TECS, US-VISIT, etc.) for the following information, the officer/agent will include in the request the alien's name, date of birth, admission number, departure record number, G-CNMI VWP date of entry, and port of entry (if known).
- 4) **Violated the terms of admission.** The alien, after having been admitted to Guam or the CNMI, is found to be in violation of any provision of INA § 237, to include remaining in Guam or the CNMI longer than authorized or being inadmissible at the time of entry.

5.3. Case Processing. After the officer/agent encountering the alien determines that the alien's case meets the criteria for VWP or G-CNMI VWP removal, as appropriate, the officer/agent can begin processing the case as a VWP removal.

- 1) Case processing will include the following documents:
 - a) Record of Deportable/Inadmissible Alien, Form I-213;
 - b) Warrant of Arrest, Form I-200;
 - c) VWP Notice of Intent to Issue a Final Administrative Removal Order;
 - d) VWP Notice to Alien Ordered Removed/Departure Verification;
 - e) Record of Proceeding Visa Waiver Program Removal – Check List;
 - f) VWP Final Administrative Removal Order;
 - g) Certification of Authenticity of the Record of Proceedings; and
 - h) Any additional forms used to conform with applicable processing guidelines.
- 2) A sworn statement is required if the VWP removal is being contested. A sworn statement may also be used if there are issues that can only be documented or resolved with execution of a sworn statement.

5.4. ICE Custody Determination. Because the alien previously waived any right to contest removal by entering under a VWP, ICE retains the discretion to decide whether an alien subject to a VWP removal should be detained or released under appropriate conditions. Supervisory ICE officers/agents may, in their discretion, release aliens from custody on a case-by-case basis for humanitarian reasons, public interest, or other matters deemed in the interest of the DHS, and should refer to current guidance on prosecutorial discretion, civil immigration enforcement priorities, and other relevant ICE guidance when processing VWP removal cases. Determinations to release aliens from custody can be conditioned upon posting a bond or use of alternatives to detention. Subject to any local court precedent, the alien is not entitled to a review of ICE's custody determination before an IJ. For questions regarding custody authority, contact the local OCC.

5.5. Preparation and Service of the Notice of Intent to Issue a Final Administrative Removal Order (NOI).

- 1) The Issuing Officer will prepare or request preparation of a NOI pursuant to INA § 217 or pursuant to INA § 212(l), as appropriate. The NOI will provide the alien notice of the charges against him or her and include:

- a) That the alien is not a citizen or national of the United States;
- b) The country of which the alien is a citizen or national;
- c) The place and manner of admission into the United States (or Guam or the CNMI); and
- d) The act(s) of the alien which constitute a violation of U.S. immigration law.

The NOI will also cite the section(s) of the INA under which the alien is removable. The Issuing Officer will print his or her name in the signature block, if not electronically pre-populated, and sign in the signature block, including the date, city, and state on the designated lines.

- 2) The Serving Officer will confirm that the individual who was served with the NOI is the alien named in the NOI. The Serving Officer will explain the purpose and contents of the notice to the alien. The Serving Officer will remind the alien that he or she has waived the right to a hearing before an IJ to contest any removal action except for an application for asylum, as a condition of admission under the VWP. The Serving Officer will sign his or her name and list the location of service in the designated location on the NOI. If necessary, the Serving Officer may use an interpreter to communicate with the alien. If an interpreter is used, the interpreter's name and Employee Identification Number will be listed in the Certificate of Service page.
- 3) The Serving Officer will ensure that the alien acknowledges receiving and understanding the NOI by signing and dating the form on the designated lines of the Certificate of Service page. If the alien refuses to sign the NOI, a Witnessing Officer will mark the appropriate box and then sign and date the form on the designated lines.
- 4) The Serving Officer will notify the alien that he or she has 48 hours to respond to the charges in the NOI. If the alien indicates that he or she may contest removability, the Serving Officer will document any claim the alien makes. If the alien indicates that his or her basis for contesting removal is anything other than an application for asylum, withholding of removal or protection under CAT, the Serving Officer will advise the alien that he is being accorded 48 hours to substantiate his claim, during which time the Serving Officer will investigate the claim's validity. After 48 hours, the Serving Officer will complete a written analysis of the claim, either in the narrative portion on the Form I-213, or in a memorandum to the District Director. The most common grounds for contesting removability under the VWP are:
 - a) The alien claims to be a citizen or national of the United States;
 - b) The alien claims to be a lawful permanent resident of the United States;

- c) The alien claims to be in compliance with the terms of his or her admission under the VWP and was admissible at the time of entry;
- d) The alien claims that his or her last entry into the United States was not pursuant to the VWP; and
- e) The alien claims to be entitled to Temporary Protected Status (TPS) under INA § 244.

5) Application for Asylum.

- a) If the alien indicates his or her wish to file an application for asylum, withholding of removal, or protections under CAT by checking the appropriate box on the NOI or by otherwise expressing that he or she fears persecution on account of his or her race, religion, nationality, membership in a particular social group, or political opinion, or fears torture in any specific country or countries, the officer/agent will refer the case to the IJ for asylum-only proceedings by issuing a Form I-863, Notice of Referral to Immigration Judge. In this instance, the District Director will issue an administrative removal order. However, the order cannot be acted upon unless the IJ denies the claim and any appeals to the Board of Immigration Appeals and federal courts, if a stay of removal is in effect, are exhausted.
- b) The Serving Officer will note any non-verbal indicators and verbal claims of fear on the Form I-213 or through a memorandum to the file and issue a Form I-863.
- c) ICE officers and agents are not to make any determinations with respect to the validity or likelihood of success of any claim for asylum; an IJ will make all determinations concerning eligibility for asylum, withholding of removal, and/or regulatory CAT protection. ICE officers and agents should also refrain from offering advice to individual aliens about the asylum adjudication process or the likelihood of success of their asylum claim.
- 6) If the alien does not wish to contest removal and signs the appropriate box on the NOI, waiving the 48-hour period, then the officer/agent may immediately prepare the administrative VWP removal order for supervisory signature.
- 7) If the alien fails to respond to or contest the allegations, the officer/agent will sign the designated portion of the NOI and forward the ROP to the OCC. The officer/agent may be any DHS officer with the authority to enforce U.S. immigration laws, including the Serving Officer.

5.6. Review by the ICE Office of the Chief Counsel (OCC). Prior to issuance of the VWP removal order, the Issuing Officer will ensure that the ROP is created, using the ROP Visa Waiver Program Removal Check List. When the ROP is created, the officer/agent should ask the local OCC to review the record for legal sufficiency. If the OCC finds that

the ROP is not legally sufficient, the OCC will advise the officer/agent on the appropriate steps needed to either remedy the insufficiency or terminate the proceedings. If the ROP is legally sufficient, the OCC will return the ROP to the officer/agent so that the District Director can issue the removal order.

- 5.7. Issuance of the VWP Final Administrative Removal Order.** The District Director, or his or her designee (not the same person who issues the NOI), will review the record to determine if the alien is subject to removal. If the District Director finds that removability has been established by clear and convincing evidence in the ROP, the District Director will enter an administrative VWP removal order. The printed name and title of the District Director should populate the designated line. In addition, the District Director should sign his or her name, list the city and state where the order is issued, and date the form on the designated line. If the District Director sustains some, but not all, of the charges, the District Director shall annotate the NOI by striking any charges the District Director finds were not sustained. If the District Director finds that the alien is not subject to removal under this process, the District Director must terminate the proceedings by cancelling the NOI and issuing a written memorandum to the A-file with the reasons for the termination. The District Director will notify the alien, in writing, of the termination of the proceedings and have the alien processed pursuant to applicable governing law, regulation, or policy, which may include service of a new NOI.
- 5.8. Service of the Final Administrative Removal Order.** The Serving Officer will serve the alien with the administrative VWP removal order. Both the alien and the Serving Officer will date and sign the order. If the alien refuses to sign for receipt of the order, a Witnessing Officer will check the appropriate box on the form, then sign and date the form on the designated lines.
- 5.9. ROP.** The Issuing Officer will ensure that a ROP is created for each VWP removal case before the VWP removal order is issued. The completed ROP must include:
- 1) The VWP Notice of Intent to Issue a Final Administrative Removal Order;
 - 2) The Record of Deportable/Inadmissible Alien, Form I-213;
 - 3) The VWP Final Administrative Removal Order;
 - 4) Record of immigration status (e.g., Form I-94 or I-94W, ESTA, TECS, US-VISIT, copy of passport, sworn statement, etc.); and
 - 5) Any response the alien offers, any evidence DHS relied upon to support the charges, and all admissible evidence (briefs and other documents) submitted by either party regarding removability. It is good practice to include conviction records, particularly for any serious criminal convictions, in the ROP even where a criminal removal charge was not included on the NOI.

Moreover, the ROP should include the VWP ROP Check List, noting which documents are contained, and the Certification of Authenticity of the Record of Proceedings signed by the District Director. A ROP coversheet should be placed on top of the Check List and the documents. The ROP will be kept in order of the Check List on the left side of the A-File.

5.10. Preparing the Notice to Alien Ordered Removed/Departure Verification.

- 1) Once the removal order has been issued, the Serving Officer will prepare and serve the alien with a Notice to Alien Ordered Removed/Departure Verification. This document notifies the alien that he or she is barred from entering the United States for a period of time in accordance with INA § 212(a)(9). The Serving Officer will advise the alien of the potential criminal penalties under 8 U.S.C. § 1326 for re-entering the United States without authorization.
- 2) The Serving Officer will sign his or her name and list his or her title, the date, and the office location on the designated lines. The lower portion of the form serves as the Verification of Removal once ICE physically removes the alien from the United States. The Serving Officer will ensure that the lower portion contains the alien's photo and fingerprint at the time of service.
- 3) The alien will need to sign the designated signature line. If the alien refuses to sign, a Witnessing Officer will check the appropriate box and attest that the alien refused to sign by signing the designated line.
- 4) Once removal from the United States is complete, the ICE officer/agent verifying removal will complete the Verification of Removal section of the Notice to Alien Ordered Removed/Departure Verification.

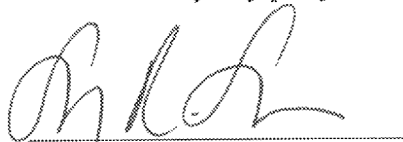
5.11. Removal. The officer/agent should attempt to effect a VWP removal at carrier expense to the country of embarkation by preparing and serving upon the carrier Form I-259, Notice to Detain, Remove or Present Alien. If the liable carrier denies responsibility or liability and refuses to accept the alien for removal, then it may be necessary to remove the alien at government expense while pursuing reimbursement from the carrier through ERO's Removal Management Division.

6. Recordkeeping. Any records generated as a result of this Directive will be stored in the Enforce Alien Removal Module (EARM) or the A-File.

7. Authorities/References.

- 7.1.** INA § 217, 8 U.S.C. § 1187.
- 7.2.** INA § 212(l), 8 U.S.C. § 1182(l).
- 7.3.** 48 U.S.C. §§ 1806(a)(2) and (a)(7).

- 7.4. 8 C.F.R. Part 1.2.
- 7.5. 8 C.F.R. Part 217, Visa Waiver Program.
- 7.6. 8 C.F.R. Part 212.1(q), G-CNMI Visa Waiver Program.
- 7.7. *Matter of A-W-*, 25 I&N Dec. 45 (BIA 2009).
- 7.8. DHS Delegation Order 7030.2, Delegation of Authority to the Assistant Secretary for the Bureau of Immigration and Customs Enforcement, ¶¶ 2(H), (K), (O), (T), (U), 3(D) (Nov. 13, 2004).
- 8. **Attachments.**
 - 8.1. Attachment 1: Required Documentation for VWP Removals.
 - 8.2. VWP Notice of Intent to Issue a Final Administrative Removal Order, Form 71-058;
 - 8.3. Record of Proceeding Visa Waiver Removal – Check List, Form 71-059;
 - 8.4. VWP Final Administrative Removal Order, Form 71-060;
 - 8.5. VWP Notice to Alien Ordered Removed/Departure Verification, Form 71-061;
 - 8.6. Certification of Authenticity of the Records of Proceedings, Form 71-057;
 - 8.7. G-CNMI VWP Notice of Intent to Issue a Final Administrative Removal Order, Form 71-053;
 - 8.8. G-CNMI Record of Proceeding Visa Waiver Removal – Check List, Form 71-054;
 - 8.9. G-CNMI VWP Final Administrative Removal Order, Form 71-055;
 - 8.10. GCNMI VWP Notice to Alien Ordered Removed/Departure Verification, Form 71-056.
- 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
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