



U.S. Immigration  
and Customs  
Enforcement

MEMORANDUM FOR: All Field Office Directors AUG 25 2006

FROM: John P. Torres, Acting Director  
Office of Detention and Removal

SUBJECT: Confiscation and Return of Original Documents

A handwritten signature in black ink, appearing to read "John P. Torres".

*This memorandum supersedes the memorandum dated July 14, 2006, due to revisions regarding the following subsection: Aliens Under Orders of Supervision.*

Upon initiation of removal proceedings against any alien, including Lawful Permanent Residents (LPRs), the Office of Detention and Removal (DRO) will generally confiscate any foreign and domestic government issued documents either in the alien's possession or submitted to DRO by the alien. Such documents may include, without limitation, passports, driver's licenses, social security cards, alien registration cards (I-551), birth certificates, foreign identification cards, school records, etc. DRO will generally retain all confiscated documents of aliens in removal proceedings, as well as aliens with final orders of removal that have been released from DRO custody. Additionally, confiscated documents of detained aliens will be retained by DRO.

Upon release of the alien from detention, DRO officers frequently face questions from aliens and their attorneys regarding return of such documents. The decision to retain or return any particular document will be made on a case-by-case basis, and be based on ICE operational and evidentiary needs. Pursuant to the procedures outlined below, DRO officers, in consultation with other ICE offices, as necessary, will review the validity of an alien's request, assess ICE's operational need for the document, and render a final decision.

In determining whether to return a particular document, the officer should assess whether the alien is legally entitled to possess the document, whether the alien has expressed a legitimate need for the document, and whether ICE has an operational need to retain the document. If a question exists whether an alien is lawfully entitled to a particular government document under state or federal law, the officer should refer the matter to a supervisor or the local Office of Chief Counsel. In general, DRO officers should apply the following guidelines:

- If the alien is not legally entitled to possess the document, and ICE has no operational need to retain the document, then the document should be returned to the government agency that issued the document;
- If the alien can legally possess the document, and ICE has no operational need to retain the document, then the document should be returned to the alien;

If the alien can legally possess the document, but ICE has identified an operational need to retain the document, then the document may be retained. If the officer determines that

the document will be retained, such retention should be based upon a clearly articulated operational need. In making this determination, the officer should assess the alien's stated need for the document and whether release of the document will compromise ICE operations, particularly ICE's future ability to execute a removal order against the alien.

ILLEGAL ALIENS AND NON-LPRs. DRO officers may retain domestically issued government documents of illegal aliens and other non-LPRs at the officer's discretion. Such documents may include state issued identification cards, driver's licenses, social security cards, or similar documents. DRO has a clear need to retain such documents as unlawful possession of such documents gives illegal aliens and other aliens not legally entitled to the possession of such documents the appearance of legitimacy, and aids them in their efforts to escape detection.

LAWFUL PERMANENT RESIDENT ALIENS. LPRs are entitled to evidence of permanent status while going through removal proceedings. If a DRO officer confiscates a permanent I-551 due to pending proceedings, upon the alien's release from detention, ICE should issue a temporary I-551 card to the alien as evidence of LPR status. If the temporary I-551 card expires during removal proceedings, the DRO office with jurisdiction over the alien shall renew and/or re-extend the card as required. Upon entry of an administratively final order of removal, an LPR's status terminates and the temporary I-551 should be confiscated. If relief is granted or proceedings are terminated, the permanent I-551 card shall be returned to the LPR and/or exchanged for the temporary I-551 that was temporarily issued.

In most cases, non-detained LPRs in removal proceedings are legally entitled to basic forms of identification such as driver's licenses and social security cards until an administratively final order of removal is entered against them. Therefore, if an LPR who is not in custody requests the return of a government issued document and can show a legitimate need for it, the DRO officer should only retain the document where a clear operational need would be jeopardized by the document's release.

COPIES AND ALIEN ACKNOWLEDGMENT. Copies of any documents returned to any alien should be placed in the alien's file and must be accompanied by a form or notation by the alien acknowledging receipt/return of the document. Additionally, copies of original documents retained by DRO may be provided to the alien upon assessment of the alien's expressed need, unless there is an operational concern to restrict access.

CRIMINAL PROSECUTIONS. For cases being presented to the U.S. Attorney's Office for prosecution, ICE will retain all confiscated government issued documents. LPRs whose permanent I-551s are confiscated should be issued temporary I-551s as outlined previously.

ALIENS UNDER ORDERS OF SUPERVISION. Generally, ICE will retain all foreign issued documents, including, but not limited to, passports, identity cards, and birth certificates of aliens under a final order of removal, as these are needed to obtain a valid travel document for the alien in order to effectuate removal. The retention and/or return of such documents will be reviewed on a case-by-case basis. As to U.S. issued documents, their return shall be weighed against DRO's operational needs and the alien's expressed need for the document.

REQUESTS BY FOREIGN GOVERNMENTS. When an administratively final order of removal has been issued and is in effect, ICE officials generally prepare and submit a request for a travel document to the alien's embassy and/or consular office. Such requests include copies of documents that may verify an individual's identity, citizenship and/or nationality. ICE will retain the originals of the government issued documents submitted to the embassy and/or consular office. However, if foreign and/or domestic officials submit written inquiries requesting the return of the original document(s), ICE may surrender the document(s) and place copies in the A-file after conferring with legal counsel.

FRAUDULENT DOCUMENTS. Foreign and domestic government documents (i.e. passports, social security cards, driver's licenses, etc.) that are counterfeit or were obtained fraudulently will be confiscated and retained by ICE officials in all instances. Only authentic documents will be considered for return.