



**U.S. Immigration
and Customs
Enforcement**

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MEMORANDUM FOR: Field Office Directors and Special Agents in Charge

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

Marcy M. Forman
Office of Investigations

SUBJECT: Record of Proceedings in Reinstatement and
Administrative Removal Cases

Purpose

Section 241(a)(5) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1231(a)(5) (2000), provides the Attorney General with authority to reinstate a previously executed removal order with respect to aliens who illegally reenter the United States.

Section 238(b) of the INA, 8 U.S.C. § 1228(b) (2000), provides the Attorney General with the authority to administratively remove certain criminal aliens.

This memorandum will standardize the practice in preparing and preserving records of proceedings (ROP) in these matters. This practice will allow these cases to be defended more successfully in federal courts.

Background

8 C.F.R. §§ 241.8 and 238.1 implement the aforementioned sections of the INA. Guidance is also provided in Chapters 14.7 and 14.8 of the Detention and Deportation Officer's Field Manual, which sets forth the procedure for reinstating a final order, the content of the ROP, and the manner of certifying a reinstatement case for judicial review. See also the Administrative Removal Proceedings Manual (M-430), Appendix 14-1 for guidance on preparation of the record in administrative removal proceedings. This memorandum reinforces guidance already in place and provides supplementary instructions to both Field Office Directors and Special Agents in Charge on how to properly create the administrative record or the ROP in reinstatement and administrative removal cases.

Discussion

A. Reinstatement:

The deciding officer (DO) must maintain a permanent ROP in each case where a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) is issued. This is necessary to facilitate development of the administrative record for possible judicial review. Processing officers (PO) are required to create the ROP for presentation to the DO. Included in the ROP are those documents the Government will rely on to reinstate the prior order, and any other pleadings or evidence pertaining to the reinstatement. At a minimum, the ROP must include copies of:

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1. Notice of Intent/Decision to Reinstate Prior Order (Form I-871);
2. The prior administrative removal order;
3. Notice to Alien Ordered Removed/Departure Verification (Form I-296);
4. The record check or fingerprint match, as reflected in the Integrated Automated Fingerprint ID System (IAFIS);
5. Any documentary evidence submitted by the alien;
6. Record of Sworn Statement or the alien's declination to provide such statement (Form I-877);
7. Record of Deportable/Inadmissible Alien (Form I-213);
8. Previously executed Warrant of Removal/Deportation (Form I-205); and
9. Previously executed Warning to Alien Ordered Removed or Deported (Form I-294).

Additionally, the ROP must include any other evidence that the official relied upon to support the charges and any documents that rebut the alien's assertion that reinstatement is improper, such as a decision on an application for adjustment of status if it is related to reinstatement. See 8 C.F.R. § 241.8(a).

The issuing DO must certify the authenticity of the documents contained in the ROP. It is important that the original documents that were copied and placed in the ROP be kept in the A-File for possible use in any criminal or civil action.

B. Administrative Removal:

Similarly, a ROP must be maintained where a Final Administrative Removal Order (Form I-851A) is issued. Again, POs are required to create the ROP for presentation to the DO. The ROP must include copies of:

1. Notice of Intent to Issue a Final Administrative Removal Order (Form I-851);
2. Evidence of immigration status (CIS, RAPS, NIIS, etc.);
3. Record of Deportable/Inadmissible Alien (Form I-213);
4. Record of Sworn Statement or the alien's declination to provide such statement (Form I-877);
5. Final Administrative Removal Order (including any supplemental memorandum of decision)(Form I-851A);
6. Certified Conviction documents for commission of an aggravated felony;
7. Any response the alien offers;
8. Any evidence the Government relied upon to support the charges; and
9. All admissible evidence (briefs and other documents) submitted by either party respecting deportability.

The ROP should include all documents in support of the Notice of Intent to Issue a Final Administrative Removal Order. See 8 C.F.R. § 238.1. The original documents that were copied and placed in the ROP should be kept in the A-File and made available for use in any potential civil or criminal action.

In both instances, the PO's written findings and conclusions of law must be supported by reasonable, substantial, and probative evidence, and must also be included in the ROP. The ROP should be clearly labeled and placed in the left hand side of the A-file. Moreover, the ROP should contain an Index (see attached sample indexes) noting which documents are contained in the ROP. A blue ROP coversheet should be placed on top of the Index and the documents.

Ultimately, the DO is responsible for the certification of authenticity of the ROP (see attached sample certification). The certification should be placed under the ROP coversheet. When feasible, DOs must maintain possession and control of the ROP during the pendency of any adjudication and ensuing legal challenge or during any credible fear proceedings. If the file is required elsewhere, the DO should retain a copy of the ROP. If necessary, the Department of

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Justice's Office of Immigration Litigation will directly contact the local U. S. Immigration and Customs Enforcement's Office of the Chief Counsel (OCC) in order to obtain a copy of the ROP, which must include the DO's certification.

If you have any questions on the aforementioned information, please contact your local OCC.

Attachments