




U.S. Immigration
and Customs
Enforcement

February 9, 2004

MEMORANDUM FOR: Deputy Assistant Director, Field Operations
Field Office Directors



FROM: Anthony S. Tangeman
Director, Office of Detention and Removal

SUBJECT: Post Order Custody Reviews Responsibilities and Guidance

This memorandum supersedes memorandum dated February 5, 2004 on same subject

Concerns have been raised with respect to the timeliness and completeness of Post Order Custody Reviews (POCR). It is the responsibility of every Field Office Director (FOD) to ensure that POCR cases are reviewed and completed in a timely manner, in compliance with current regulations. It is important that every FOD manage their process to ensure timely completions of the legally mandated reviews.

Field offices must complete POCRs in a timely manner at the 90-day point pursuant to 8 CFR § 241.4. Information being sent to Headquarters for review with respect to each case must accurately reflect the information contained in the A-file. All written custody decisions served on detainees must include the specific case information and must not be based on generalizations or inferences. In addition, the reasons for the specific decision must be clearly articulated in the decision letter to the alien. FODs are to take into account the probability of removal when making custody decisions at the 90-day point, both as to the country in general and the individual in particular. If release is not warranted under the regulations, clearly articulate why the alien cannot be released, based on the alien being a threat and / or a flight risk. While violence is a key factor, past violence does not necessarily demonstrate that the alien is a present threat to society and therefore subject to continued custody. Therefore, decisions must be based on a totality of the circumstances. For cases where it appears there is no likelihood of removal in the foreseeable future, FODs should refer 8 CFR § 241.4 detain decision cases to HQPDU immediately after the 90-day review. For cases where a stay has been entered and the alien remains in custody after the ninety-day review, the FODs must conduct annual reviews pursuant to 8 CFR § 241.4 while the stay is in effect.

Field offices are responsible for managing cases even after custody jurisdiction is transferred to HQPDU. It is essential that in cases where custody jurisdiction is transferred to HQPDU, the field office is still responsible for keeping HQPDU informed of any relevant changes in the case. This

information would include, for example, whether a travel document will or will not be issued or whether the subject cannot post bond if one is required, etc. This information is critical in assisting HQPDU in assessing the feasibility of removal of these aliens subsequent to a detain decision, as well as making future custody decisions. Continuous and timely communication between the field offices and HQPDU is essential in the management of these cases.

Field offices may refer to HQPDU's Intranet Website (<http://powerport.ins/bulletinboards/hqpdu/>) or the DRO Web Page for the policies and procedures regarding the completion of POCR reviews and decisions. The site includes a link to the Detention & Deportation Officer's Field Manual (Ch. 17 POCRs), as well as training slides and other pertinent information. Training will be conducted in field offices in the near future. Any questions regarding POCR issues should be forwarded to (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) at HQPDU, (b)(6),(b)(7)(C)