

**§ 241.3 Detention of aliens during removal period.**

(a) *Assumption of custody.* Once the removal period defined in section 241(a)(1) of the Act begins, an alien in the United States will be taken into custody pursuant to the warrant of removal.

(b) *Cancellation of bond.* Any bond previously posted will be canceled unless it has been breached or is subject to being breached.

(c) *Judicial stays.* The filing of (or intention to file) a petition or action in a Federal court seeking review of the issuance or execution of an order of removal shall not delay execution of the Warrant of Removal except upon an affirmative order of the court.

**§ 241.4 Continued detention beyond the removal period.**

(a) *Continuation of custody for inadmissible or criminal aliens.* The district director may continue in custody any alien inadmissible under section 212(a) of the Act or removable under section 237(a)(1)(C), 237(a)(2), or 237(a)(4) of the Act, or who presents a significant risk of noncompliance with the order of removal, beyond the removal period, as necessary, until removal from the United States. If such an alien demonstrates by clear and convincing evidence that the release would not pose a danger to the community or a significant flight risk, the district director may, in the exercise of discretion, order the alien released from custody on such conditions as the district director may prescribe, including bond in an amount sufficient to ensure the alien's appearance for removal. The district may consider, but is not limited to considering, the following factors:

- (1) The nature and seriousness of the alien's criminal convictions;
- (2) Other criminal history;
- (3) Sentence(s) imposed and time actually served;
- (4) History of failures to appear for court (defaults);
- (5) Probation history;
- (6) Disciplinary problems while incarcerated;
- (7) Evidence of rehabilitative effort or recidivism;
- (8) Equities in the United States; and

(9) Prior immigration violations and history.

(b) *Continuation of custody for other aliens.* Any alien removable under any section of the Act other than section 212(a), 237(a)(1)(C), 237(a)(2), or 237(a)(4) may be detained beyond the removal period, in the discretion of the district director, unless the alien demonstrates to the satisfaction of the district director that he or she is likely to comply with the removal order and is not a risk to the community.

**§ 241.5 Conditions of release after removal period.**

(a) *Order of supervision.* An alien released pursuant to § 241.4 shall be released pursuant to an order of supervision. A district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge may issue an order of supervision on Form I-220B. The order shall specify conditions of supervision including, but not limited to, the following:

- (1) A requirement that the alien report to a specified officer periodically and provide relevant information under oath as directed;
- (2) A requirement that the alien continue efforts to obtain a travel document and assist the Service in obtaining a travel document;
- (3) A requirement that the alien report as directed for a mental or physical examination or examinations as directed by the Service;
- (4) A requirement that the alien obtain advance approval of travel beyond previously specified times and distances; and
- (5) A requirement that the alien provide the Service with written notice of any change of address on Form AR-11 within ten days of the change.

(b) *Posting of bond.* An officer authorized to issue an order of supervision may require the posting of a bond in an amount determined by the officer to be sufficient to ensure compliance with the conditions of the order, including surrender for removal.

(c) *Employment authorization.* An officer authorized to issue an order of supervision may, in his or her discretion,

grant employment authorization to an alien released under an order of supervision if the officer specifically finds that:

(1) The alien cannot be removed because no country will accept the alien; or

(2) The removal of the alien is impracticable or contrary to public interest.

**§241.6 Administrative stay of removal.**

Any request of an alien under a final order of deportation or removal for a stay of deportation or removal shall be filed on Form I-246, Stay of Removal, with the district director having jurisdiction over the place where the alien is at the time of filing. The district director, in his or her discretion and in consideration of factors such as are listed in §212.5 of this chapter and section 241(c) of the Act, may grant a stay of removal or deportation for such time and under such conditions as he or she may deem appropriate. Neither the request nor the failure to receive notice of disposition of the request shall delay removal or relieve the alien from strict compliance with any outstanding notice to surrender for deportation or removal. Denial by the district director of a request for a stay is not appealable, but such denial shall not preclude an immigration judge or the Board from granting a stay in connection with a motion to reopen or a motion to reconsider as provided in 8 CFR part 3. The Service shall take all reasonable steps to comply with a stay granted by an immigration judge or the Board. However, such a stay shall cease to have effect if granted (or communicated) after the alien has been placed aboard an aircraft or other conveyance for removal and the normal boarding has been completed.

**§241.7 Self-removal.**

A district director may permit an alien ordered removed (including an alien ordered excluded or deported in proceedings prior to April 1, 1997) to depart at his or her own expense to a destination of his or her own choice. Any alien who has departed from the United States while an order of deportation or removal is outstanding shall be considered to have been deported, excluded

and deported, or removed, except that an alien who departed before the expiration of the voluntary departure period granted in connection with an alternate order of deportation or removal shall not be considered to have been so deported or removed.

**§241.8 Reinstatement of removal orders.**

(a) *Applicability.* An alien who illegally reenters the United States after having been removed, or having departed voluntarily, while under an order of exclusion, deportation, or removal shall be removed from the United States by reinstating the prior order. The alien has no right to a hearing before an immigration judge in such circumstances. In establishing whether an alien is subject to this section, the immigration officer shall determine the following:

(1) Whether the alien has been subject to a prior order of removal. The immigration officer must obtain the prior order of exclusion, deportation, or removal relating to the alien.

(2) The identity of the alien, i.e., whether the alien is in fact an alien who was previously removed, or who departed voluntarily while under an order of exclusion, deportation, or removal. In disputed cases, verification of identity shall be accomplished by a comparison of fingerprints between those of the previously excluded, deported, or removed alien contained in Service records and those of the subject alien. In the absence of fingerprints in a disputed case the alien shall not be removed pursuant to this paragraph.

(3) Whether the alien unlawfully reentered the United States. In making this determination, the officer shall consider all relevant evidence, including statements made by the alien and any evidence in the alien's possession. The immigration officer shall attempt to verify an alien's claim, if any, that he or she was lawfully admitted, which shall include a check of Service data systems available to the officer.

(b) *Notice.* If an officer determines that an alien is subject to removal under this section, he or she shall provide the alien with written notice of his or her determination. The officer