

§§ 1241.3–1241.5 [Reserved]

§ 1241.6 Administrative stay of removal.

(a) An alien under a final order of deportation or removal may seek a stay of deportation or removal from the Department of Homeland Security as provided in 8 CFR 241.6.

(b) A denial of a stay by the Department of Homeland Security shall not preclude an immigration judge or the Board from granting a stay in connection with a previously filed motion to reopen or a motion to reconsider as provided in 8 CFR part 1003.

(c) 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.

[65 FR 80298, Dec. 21, 2000, as amended at 67 FR 39259, June 7, 2002; 70 FR 674, Jan. 5, 2005]

§ 1241.7 Self-removal.

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 be so deported or removed.

[67 FR 39260, June 7, 2002, as amended at 70 FR 674, Jan. 5, 2005]

§ 1241.8 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 shall advise the alien that he or she may make a written or oral statement contesting the determination. If the alien wishes to make such a statement, the officer shall allow the alien to do so and shall consider whether the alien's statement warrants reconsideration of the determination.

(c) *Order.* If the requirements of paragraph (a) of this section are met, the alien shall be removed under the previous order of exclusion, deportation, or removal in accordance with section 241(a)(5) of the Act.

(d) *Exception for applicants for benefits under section 902 of HRIFA or sections 202 or 203 of NACARA.* If an alien who is otherwise subject to this section has applied for adjustment of status under either section 902 of Division A of Public Law 105-277, the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA), or section 202 of Public Law

105–100, the Nicaraguan Adjustment and Central American Relief Act (NACARA), the provisions of section 241(a)(5) of the Immigration and Nationality Act shall not apply. The immigration officer may not reinstate the prior order in accordance with this section unless and until a final decision to deny the application for adjustment has been made. If the application for adjustment of status is granted, the prior order shall be rendered moot.

(e) *Exception for withholding of removal.* If an alien whose prior order of removal has been reinstated under this section expresses a fear of returning to the country designated in that order, the alien shall be immediately referred to an asylum officer for an interview to determine whether the alien has a reasonable fear of persecution or torture pursuant to § 1208.31 of this chapter.

(f) *Execution of reinstated order.* Execution of the reinstated order of removal and detention of the alien shall be administered in accordance with this part.

[62 FR 10378, Mar. 6, 1997, as amended at 64 FR 8495, Feb. 19, 1999; 66 FR 29451, May 31, 2001]

§§ 1241.9–1241.13 [Reserved]

§ 1241.14 Continued detention of removable aliens on account of special circumstances.

(a) *Scope.* This section provides for the review of determinations by the Department of Homeland Security to continue the detention of particular removable aliens found to be specially dangerous. See 8 CFR 241.14.

(1) *Applicability.* This section applies to the review of the continued detention of removable aliens because the Department of Homeland Security has determined that release of the alien would pose a special danger to the public, where there is no significant likelihood of removal in the reasonably foreseeable future. This section does not apply to aliens who are not subject to the special review provisions under 8 CFR 241.13.

(2) *Jurisdiction.* The immigration judges and the Board have jurisdiction with respect to determinations as to whether release of an alien would pose a special danger to the public, as pro-

vided in paragraphs (f) through (k) of this section.

(b)–(e) [Reserved]

(f) *Detention of aliens determined to be specially dangerous—(1) Standard for continued detention.* Subject to the review procedures provided in this section, the Service shall continue to detain an alien if the release of the alien would pose a special danger to the public, because:

(i) The alien has previously committed one or more crimes of violence as defined in 18 U.S.C. 16;

(ii) Due to a mental condition or personality disorder and behavior associated with that condition or disorder, the alien is likely to engage in acts of violence in the future; and

(iii) No conditions of release can reasonably be expected to ensure the safety of the public.

(2) *Determination by the Commissioner.* The Service shall promptly initiate review proceedings under paragraph (g) of this section if the Commissioner has determined in writing that the alien's release would pose a special danger to the public, according to the standards of paragraph (f)(1) of this section.

(3) *Medical or mental health examination.* Before making such a determination, the Commissioner shall arrange for a report by a physician employed or designated by the Public Health Service based on a full medical and psychiatric examination of the alien. The report shall include recommendations pertaining to whether, due to a mental condition or personality disorder and behavior associated with that condition or disorder, the alien is likely to engage in acts of violence in the future.

(4) *Detention pending review.* After the Commissioner or Deputy Commissioner has made a determination under this paragraph, the Service shall continue to detain the alien, unless an immigration judge or the Board issues an administratively final decision dismissing the review proceedings under this section.

(g) *Referral to Immigration Judge.* Jurisdiction for an immigration judge to review a determination by the Service pursuant to paragraph (f) of this section that an alien is specially dangerous shall commence with the filing by the Service of a Notice of Referral