



Office of the General Counsel

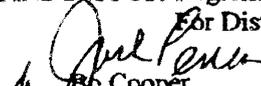
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MEMORANDUM FOR Regional Counsel

For Distribution to District and Sector Counsel

FROM:

  
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SUBJECT: Detention and Release during the Removal Period of Aliens Granted Withholding or Deferral of Removal

Section 241(a)(1) of the Immigration and Nationality Act (INA) establishes a 90-day "removal period" that generally commences on the date a removal order becomes administratively final. Certain aliens are subject to mandatory detention by the INS during this removal period. This memorandum addresses the authority of the Immigration and Naturalization Service (INS) under certain circumstances to release an alien who has a final order of removal, and who has also been granted withholding or deferral of removal, before the 90 day removal period has expired.

Under INA section 241(a)(2), once the removal period has begun, the INS may -- but is not required to -- detain a non-criminal alien until removal is effected. Section 241(a)(2) generally requires the INS to detain all terrorists, all aggravated felons, and most other criminal aliens during the removal period and during any extension of the removal period. Please see HQCOU's March 16, 2000 memorandum entitled "Detention and Release of Aliens with Final Orders of Removal" for a more detailed interpretation of these provisions. Under certain circumstances, however, there is authority for the INS to release an alien who has been finally granted withholding or deferral of removal when the INS is not actively pursuing the alien's removal, even though the alien would otherwise be subject to mandatory detention.

An alien who has been finally granted withholding of removal to a specific country under INA section 241(b)(3), or who has been granted either withholding or deferral of removal to a specific country under the Convention Against Torture, remains an alien who is subject to a final

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order of removal. Generally, the INS may execute that order to any country other than the country to which removal has been withheld or deferred. Thus, if the INS is actively pursuing removal to an alternate country, there is no authority during the removal period to release an alien who is subject to mandatory detention. The purpose of the removal period, however, is to facilitate the execution of the removal order. If, therefore, an alien has been finally granted withholding or deferral of removal and the INS is not actively pursuing the alien's removal to an alternate country, the INS has authority to consider the release of such an alien during the removal period. This means only that there is authority to consider release of such aliens; it does not mandate their release. The decision whether or not to release such an alien must take into consideration all appropriate factors, including whether the alien poses a threat to the community or flight risk.