

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ENFORCEMENT AND REMOVAL OPERATIONS**

Confiscation and Return of Original Documents

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1. Purpose/Background.

- 1.1** This Directive provides U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) Officers with policy and procedures for confiscating and returning original documents upon initiation of removal proceedings against any noncitizen, including Lawful Permanent Residents (LPRs), as well as the subsequent release and/or removal of these individuals. Such documents may include, among other items, passports, driver's licenses, social security cards, permanent resident cards (I-551), birth certificates, foreign identification cards, and school records.
- 1.2** This Directive provides ERO Officers with guidance regarding the procedures for retention and recordkeeping of confiscated documents of noncitizens in removal proceedings. While these guidelines apply to both detained and non-detained noncitizens, standards on the handling of identity documents and the provision of certified copies for detained noncitizens are in the Performance Based National Detention Standards (PBNDS) 2011 Standards 2.1 and 2.5, the PBNDS 2008 Standards on Admission & Release and Funds & Personal Property, National Detention Standards (NDS) 2019 Standards 2.1 and 2.4, and the Family Residential Standards (FRS) 2020 Standards 2.1 and 2.3.

2. Policy.

- 2.1** ERO Officers will generally confiscate any foreign and domestic government-issued documents either in the noncitizen's possession or submitted to ERO by the noncitizen. ERO will generally retain all confiscated documents of noncitizens in removal proceedings, with some exceptions, and those of noncitizens with final orders of removal released from ERO custody.
- 2.2** All confiscated documents shall be recorded. Officers shall add details such as the type of document confiscated in the Miscellaneous Numbers menu in the Enforce Alien Removal Module (EARM). Images of the documents may also be scanned to this location. The noncitizen shall be provided with a certified copy of

their documents with a notation that ICE is in possession of the original. If a document was returned to the issuing authority, an officer shall indicate so in EARM.

- 2.3** In some cases, noncitizens who are not detained may request access to documents in ERO's possession. There are several common reasons for requesting the return of documents, including for opening a bank account, enrolling in school, and filing taxes. If, during removal processing, the noncitizen requests a passport or other document in ERO's possession, ERO officers shall make a determination on a case-by-case basis. Pursuant to the procedures outlined below, ERO officers will review the validity of a noncitizen's request, assess ICE's operational and evidentiary need for the document, and render a decision.
- 2.4** Prior to a scheduled removal, all original documents shall be returned to noncitizens excluding those generally necessary to effectuate a noncitizen's removal (i.e., a passport / travel document), as well as documents which are confirmed or suspected to be fraudulent, and documentation the noncitizen is no longer entitled to, such as work permits or I-551 cards following issuance of a final order of removal. See Procedures below for more information on these exceptions. At any point a document is returned, officers shall record it in EARM.

3. Definitions. None.

4. Responsibilities.

- 4.1** The **Executive Associate Director for ERO** is responsible for ensuring compliance with the provisions of this Directive within ERO.
- 4.2** The **Assistant Directors for Custody, Enforcement, Field Operations, and Non-Detained** are responsible for ensuring compliance with the provisions of this Directive within their respective Divisions and Programs.
- 4.3** **Field Office Directors (FODs), or their supervisory designees (Deputy FODs and AFODs)**, are responsible for ensuring that field office personnel follow the procedures in this Directive for confiscating, returning, and retaining original documents.
- 4.4** **ERO Officers are responsible for:**
- 1) Consulting with the Office of the Principal Legal Advisor (OPLA) to determine whether to return or retain confiscated documents, if necessary;
 - 2) Ensuring that documents are returned to the noncitizen or their attorney when appropriate;

- 3) Ensuring that decisions to retain documents are based on a clearly articulated operational need;
- 4) Documenting the return or retention of documents in EARM.

5. Procedures.

5.1 Receipt of Documents. If ICE confiscates identification documents, they shall be stored in a plastic zip-lock-style ID documents envelope within the noncitizen's A-File. The confiscation of these documents shall be logged in EARM, and a certified copy of the documents shall be provided to the noncitizen, including a notation that ICE is in possession of the original.

5.2 Return of Documents. In determining whether to return a particular document, the officer should, if necessary, consult with the local OPLA to assess whether the noncitizen is legally entitled to possess the document, whether the noncitizen has a legitimate need for the document, and whether ICE has an operational need to retain the document. In general, ERO officers should apply the following guidelines:

- If the noncitizen cannot legally possess the document, and ICE has no operational need to retain the document, then the document should be returned to the government agency that issued the document.
- If the noncitizen can legally possess the document, and ICE has no operational need to retain the document, then ICE can return the document upon request by the noncitizen or attorney who represents the noncitizen.
- If the noncitizen can legally possess the document but ICE has identified an operational need to retain the document, then the document may be retained until either the noncitizen is granted relief, or depending on the type of document, an officer processes it for the noncitizen's removal by placing it in a travel document envelope or otherwise returning it to the noncitizen upon their departure from the country. If ERO determines that the document will be retained, such retention should be based upon a clearly articulated operational need.

Factors that may contribute to the decision of whether an operational need to retain a document exists may include the difficulty associated with getting a new passport, the level of recalcitrance of the noncitizen's country of citizenship, and whether a consulate issues documents irregularly. OPLA may also have need of the document for litigation purposes. The officer should also consider whether the government is in possession of supplemental identification documents.

Upon returning a detained noncitizen's documents, the noncitizen should sign an appropriate property receipt form to acknowledge possession of their documents.

All documents that are returned will first be photocopied, and the photocopies will be placed in the A-File. Upon return of the documents, comments shall be entered into EARM. Copies of the passport shall be uploaded in the electronic Travel Document (eTD) system and placed in the noncitizen's A-File for future use if the noncitizen returns to the United States.

- 5.3 Alternatives to Returning Original Identification Documents while Proceedings are Ongoing.** If the totality of a noncitizen's circumstances suggests the agency should retain the noncitizen's passport or other identity documents, the officer should consider returning other supporting identity documents to the noncitizen.
- 5.4 Recordkeeping of Original Documents.** Requests for records, the agency's response, and a copy of any documents returned to a noncitizen should be placed in the noncitizen's A-File and must be accompanied by a dated form or notation by the noncitizen acknowledging receipt/return of the original document. Notation can also be added to the noncitizen's record in EARM.
- 5.5 Copies of Documents.** In cases in which an original document may not be necessary for the noncitizen's stated intent, the officer should consider providing a copy of the requested document with a dry seal or other certification that the document made is a true copy of the original on file, unless the noncitizen cannot legally possess it or there is an operational concern to restrict access.

Some circumstances for which a noncitizen parent may have a legitimate need for a certified copy of original documents include:

- School enrollment for children (schools may need birth certificates or other identification documents and immunization records).
- Detained parents seeking reunification before removal with a U.S. citizen child may need a copy of the child's birth certificate to get a U.S. passport for the child.

- 5.6 Lawful Permanent Residents.** LPRs are entitled to evidence of permanent status while going through removal proceedings. If an LPR is placed in detention, the ERO officer can confiscate the LPR's I-551 and place the document in the noncitizen's A-File. Whenever LPRs are pre-order released from detention, ICE should make a copy of the I-551 to be retained in the LPR's A-File and the original is to be returned to the LPR. If an administratively final order of removal is entered against the LPR, their status terminates and their I-551 should be confiscated.

Non-detained LPRs in removal proceedings are legally entitled to identification such as driver's licenses and social security cards until an administratively final

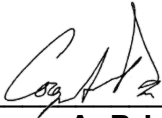
order of removal is entered against them. Therefore, if an LPR who is not in custody and not a final order requests the return of a government-issued document, the ERO officer should ensure the document is returned in a timely manner. A copy of the document should be placed in the LPR's A-File.

- 5.7 Criminal Prosecutions.** For cases being presented to the U.S. Attorney's Office for criminal prosecution, ICE will retain all confiscated government issued documents. Identity documents are not to be shredded upon completion of the criminal prosecution. If the identity documents were in a prosecution work folder, they must be returned to the A-File.
- 5.8 Noncitizens under Orders of Supervision.** Generally, ICE will retain all foreign issued identity documents, including, but not limited to, passports, identity cards, and birth certificates of noncitizens under a final order of removal, as these may be needed to obtain a valid travel document for the noncitizen in order to effectuate removal.
- 5.9 Requests by Foreign Governments.** When an administratively final order of removal has been issued and is in effect, ICE officials generally prepare and submit a request for a travel document to the noncitizen's embassy and/or consular office. Such requests include copies of documents that may verify an individual's identity, citizenship and/or nationality. ICE will retain the originals of the government issued documents submitted to the embassy and/or consular office. However, if foreign and/or domestic officials submit written inquiries requesting the return of the original document(s), after conferring with local OPLA, ICE may surrender the document(s) and follow similar procedures as in section 5.2.
- No information contained in or related to an asylum application may be released to a foreign government¹.
- 5.10 Fraudulent Documents.** Foreign and domestic government documents (i.e., passports, social security cards, driver's licenses, etc.) that are suspected to be counterfeit or were obtained fraudulently will be confiscated and retained by ICE officials in all instances. Only documents believed to be authentic will be considered for return or certified copies.
- 5.11 Notice to Detained Noncitizens.** The detainee handbook or equivalent should notify noncitizens that, upon request, they will be provided an ICE/ERO-certified copy of their documents (e.g., passport, birth certificate) and describe the process for requesting copies.
- 6. Recordkeeping.** All documents created or received by ICE must be maintained in accordance with a National Archives and Records Administration (NARA) General Records Schedule or an applicable DHS or ICE records schedule. If a schedule

¹ See "Disclosure to third parties," 8 *CFR* § 208.6

does not exist that covers the records, they are considered unscheduled. Unscheduled records cannot be destroyed or deleted until a schedule has been developed and approved by NARA. In the event the records are subject to a litigation hold, they may not be disposed of under a records schedule until further notification.

7. **Authorities/References.** None.
8. **Attachments.** None.
9. **No Private Right.** This document provides only internal ERO policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE. This guidance does not alter any provision of any statute or regulation that contains legally binding requirements, and it is not itself a regulation.



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