

U.S. Department of Homeland Security

HQDRO 50/10

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Washington, DC 20536

May 15, 2003

MEMORANDUM FOR REGIONAL DIRECTORS
ASSISTANT REGIONAL DIRECTORS, DETENTION &
REMOVAL
INTERIM DIRECTORS, ENFORCEMENT

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

SUBJECT: Follow Up Implementation of United States Supreme Court Decision in DeMore v. Kim

This memo provides further guidance to my memo of May 1 regarding the implementation of the United States Supreme Court's decision in DeMore v. Kim.

Demand Letters/Call In Letters: Field offices shall send demand letters regarding aliens who are subject to 236(c) of the Immigration and Nationality Act but were previously bonded out or call in letters to those aliens released on recognizance. The letter shall instruct the obligor to present the alien to report to the appropriate ICE office for an interview. The letter should ask that the alien bring any paperwork regarding their status, including their bond order from ICE, an Immigration Judge or District Court. Local offices should look at factors such as criminal history, humanitarian factors, and nationality (regarding ease of removability) in determining priority for issuing letters. However, all aliens subject to the decision in DeMore v. Kim shall be issued letters within 6 months from the issuance of this guidance. Any alien found by a court not to have committed an offense covered by 236(c) or was released from an authority other than ICE (i.e., from criminal custody) prior to October 9, 1998 is not subject to DeMore v. Kim and should not be sent a letter. Consult with local district counsel if there are any cases that are unclear.

Case Review & Disposition: At the interview, officers shall review any available paperwork provided by the alien and ICE records (including the A file and DACS) to determine whether the alien is subject to 236(c). Additionally, officers shall determine under what authority the alien was released. Aliens who fail to appear for their custody interview shall have their release status revoked, their bonds breached, and be treated as absconders. Please

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inform district counsel of any aliens who fail to appear for their custody interview.

- Aliens determined to be subject to 236(c) and **released either by ICE or EOIR**, shall be immediately detained and served with a revocation of release status (which must be issued but not served on the alien prior to the sending of the letter), a redetermination of custody status which will note that there has been a change of circumstance (the decision in DeMore v. Kim and/or a decision by EOIR) and their bonds cancelled. *See generally* 8 C.F.R. section 236.1(c)(9). Local district counsel should be notified of the redetermination so they can file any necessary motions with EOIR.
- Aliens determined to be subject to 236(c) but who were **released pursuant to a District Court order** should not be immediately re-detained. These cases shall be referred to local district counsel who will coordinate to have the court order vacated. Once there is proof that the court order has been vacated, a second letter shall be sent to the alien and the alien shall be detained. If it is known that an alien was released pursuant to a District court order, coordinate with district counsel to get the court order vacated prior to issuing the letter.

Aliens with District Court Order Who Have Not Posted Bond: Officers shall refer cases of aliens subject to 236(c) who have been granted bond pursuant to a District Court order but have not yet posted bond and remain in custody, to local district counsel in order to have the court order vacated. Until the court order is vacated a custody redetermination shall not be made. If the alien posts bond prior to the court order being vacated, the alien shall be released, but a demand letter shall be issued as soon as the court order has changed.

Aliens Who Appear for Hearings Prior to Demand: If an affected alien appears for a hearing before an Immigration Judge, to the extent practicable, the alien shall be taken into custody following the hearing. This does not apply if the alien bonded out pursuant to a District Court order or a final order granting relief is issued.

Please consult with local district counsel if there are any questions regarding whether a specific alien is subject to the mandatory detention provisions of §236(c). If you have any questions regarding this guidance, please contact Leonard Kovensky at (202) 305-7827.