

Office of Detention and Removal Operations

U.S. Department of Homeland Security
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Washington, DC 20536



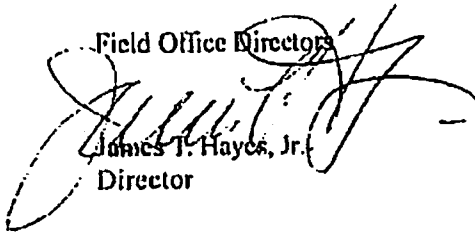
U.S. Immigration
and Customs
Enforcement

NOV 06 2008

MEMORANDUM FOR:

Field Office Directors

FROM:


James T. Hayes, Jr.
Director

SUBJECT:

Superseding Guidance on Reporting and Investigating Claims
to United States Citizenship

This Memorandum supersedes the guidance issued on July 18, 2008, entitled "Superseding Guidance on Reporting and Investigation of Claims to United States Citizenship."

The Office of Detention and Removal Operations (DRO) is responsible for the enforcement of U.S. immigration laws. In the course of exercising authority under section 287 of the Immigration and Nationality Act, 8 U.S.C. § 1357, DRO officers may encounter individuals who either assert claims to U.S. citizenship or are unsure of their citizenship. Prior to making a warrantless arrest of such an individual, DRO officers must ensure that s/he has reason to believe that the individual to be arrested is in the United States in violation of a law or regulation governing the admission, exclusion, expulsion or removal of aliens.¹ Moreover, DRO officers must fully investigate all claims to U.S. citizenship immediately upon learning of the assertion of citizenship.

All officers who encounter an individual who they have reason to believe is in the United States in violation of law, as set forth in the preceding paragraph, but who claims U.S. citizenship, shall immediately notify the Field Office Director (FOD) through their chain of command. The FOD shall make the appropriate notification to DRO headquarters. Each FOD shall ensure that all affirmative claims to U.S. citizenship made by any individual

¹ Some U.S. courts have equated the "reason to believe" standard found in 8 U.S.C. § 1357(a)(2) with a "probable cause" standard. See *U.S. v. Cantu*, 1975, 519 F.2d 494 (7th Cir. 1975), cert. denied, 423 U.S. 1035 (1975); see also *Babuja v. INS*, 665 F.3d 293 (3d Cir. 1981); *Au Yi Lou v. INS*, 445 F.2d 217 (D.C. Cir. 1971), cert. denied 404 U.S. 864 (1971).

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Citizenship

encountered within their area of responsibility are appropriately reported and investigated.

Interviews with detainees making claims to U.S. citizenship shall be conducted by either a Supervisory Immigration Enforcement Agent (SIEA) or Deportation Officer. Interviews will be recorded as sworn statements and include all questions needed to complete all fields on a Form I-213. In addition, the sworn statement must include probative questions designed to elicit information sufficient to allow an investigation of the person's claim of citizenship. This investigation may include vital records searches, family interviews, and other appropriate investigative measures.

If an affirmative claim to U.S. citizenship is made by an individual prior to the commencement of removal proceedings, the FOD will, in consultation with DRO headquarters and local Office of Chief Counsel (OCC), determine whether sufficient evidence exists to place that individual into removal proceedings. If an affirmative claim to U.S. citizenship is made by an individual following the issuance of the Notice of Appear (NTA), each OCC, in consultation with the FOD, who where necessary, should consult with HQ DRO, will determine the most appropriate course of action with respect to the disposition of the NTA and termination of the case, while providing any necessary advice to the FOD as to changes to the individual's custody conditions.

FODs shall ensure that all DRO employees in their area of responsibility (inclusive of those state, local or tribal cross-trained 287(g) officers) who are under their control, understand and adhere to this policy. Questions regarding this policy should be directed to Christopher Shanahan, Acting Assistant Director, Enforcement.

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