

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

**ICE Directive 10088.1: Fines and Penalties for Civil Violations of Immigration Law**

**Issue Date:** June 19, 2018

**Effective Date:** June 19, 2018

**Superseded:** None.

**Federal Enterprise Architecture Number:** DO-01-2018

1. **Purpose/Background.** This Directive sets forth U.S. Immigration and Customs Enforcement (ICE) policy regarding the assessment and collection of fines and penalties for civil violations of immigration law. This Directive is intended to implement sections 240B(d)(1), 274C(d)(3), and 274D(a) of the Immigration and Nationality Act (INA) and applicable regulations.<sup>1</sup> These provisions provide ICE with discretion to assess civil fines for failure to voluntarily depart the United States within the specified voluntary departure period,<sup>2</sup> prohibited activities involving document fraud,<sup>3</sup> and willful failure to depart pursuant to a final order of removal.<sup>4</sup>
2. **Policy.** ICE will exercise discretion in enforcing applicable laws and regulations governing the assessment and collection of fines and penalties against aliens, who have unlawfully remained in the United States beyond an authorized period of voluntary departure or in violation of a removal order, or individuals or business entities who have engaged in prohibited activities involving document fraud.

When assessing civil fines and penalties, ICE will notify individuals and business entities of its intention to impose a fine and the right to request administrative review of the assessed fine. When assessing fines for document fraud, ICE will notify aliens that the civil fine process is separate from removal proceedings.

3. **Definitions.** The following definitions apply for purposes of this Directive only:
  - 3.1. **Civil Fine.** A financial penalty for certain statutory civil immigration violations.
  - 3.2. **Notice of Intent to Fine or Notice of Intention to Fine (NIF).** A standardized form that provides written notice to the respondent (a person or an entity) setting forth the alleged violation(s) of the INA, the imposition of a civil fine, and a description of the appeals process.

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<sup>1</sup> See 8 C.F.R. pts. 270 (procedures for assessing fines for prohibited activities involving document fraud) and 280 (procedures for assessing fines for failing to voluntarily depart and failing to comply with a final order of removal).

<sup>2</sup> INA § 240B(d)(1).

<sup>3</sup> INA § 274C(d)(3).

<sup>4</sup> INA § 274D(a).

violation(s) of the INA, the imposition of a civil fine, and a description of the appeals process.

- 3.3. **Personal Service.** Consistent with 8 C.F.R. § 103.8(a)(2), delivery of a copy to the respondent or his or her attorney of record personally, delivery of a copy to the respondent's dwelling house or usual place of abode by leaving it with a person of suitable age and discretion, or delivery of a copy to the respondent's attorney of record or to the respondent by mailing a copy by certified or registered mail, return receipt requested, addressed to the respondent at his or her last known address.
- 3.4. **Final Decision.** The agency's decision to collect a fine after all administrative appeals have been exhausted or after the respondent fails to contest the fine within the timeframe permissible.
4. **Responsibilities.**
  - 4.1. **The Executive Associate Directors for Enforcement and Removal Operations (ERO) and Homeland Security Investigation (HSI) and the Principal Legal Advisor** are responsible for ensuring compliance with the provisions of this Directive and issuing guidance within his or her Directorate or Program Office for implementation, as appropriate.
  - 4.2. **ICE Law Enforcement Officers (LEOs)** are responsible for complying with the provisions of this Directive, as applicable, and other relevant agency, Directorate, or Program Office guidance on the process and procedures for assessing and collecting civil fines and penalties, including recordkeeping requirements.
  - 4.3. **OPLA** is responsible for providing appropriate legal guidance and representing the Department of Homeland Security in any administrative appeal before the Board of Immigration Appeals.
  - 4.4. **Office of the Chief Financial Officer (OCFO)** is responsible for the collection of civil fines and penalties, including creating accounts receivable for valid fines, issuing invoices, tracking the fines in ICE's financial system, and referring delinquent debts to the Department of the Treasury, as required by law.
5. **Procedures/Requirements.**
  - 5.1. **Initiation of Fine Assessment.** ICE has discretion to determine when to impose a civil fine. ICE LEOs must ensure that sufficient evidence is gathered and properly documented prior to the assessment of a fine. A properly issued NIF will be issued on an approved, standardized form appropriate for the specific type of civil fine.
  - 5.2. **Personal Service.** ICE will comply with service requirements in applicable regulations governing the civil fines process. LEOs will ensure that the NIF and/or Final Decision are served by personal service.

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- 5.3. **Assessment of Fines.** ICE LEOs will calculate fine amounts, as defined in statute, and consider mitigating and aggravating factors, when applicable.
- 5.4. **Administrative Review of Fine.** Respondents may contest a fine prior to collection. ICE will notify respondents of the right to be represented by counsel at no cost to the government, and the right to request administrative review.
- 5.5. **Final Decision.** A final decision by ICE will be entered and served via personal service after the applicable regulatory process for assessing a fine has been completed and all available appeals are adjudicated or the period for filing an appeal has expired. Final Decisions may not be appealed.
- 5.6. **Collection of Fines.** ICE LEOs will submit a completed NIF and supporting materials to OCFO for the collection of civil fines after a final decision is served on the respondent. OCFO shall review the NIF and supporting materials and create an accounts receivable for valid fines and follow established regulatory procedures for collecting debts owed to the government. ICE LEOs may not accept payment for any civil fines.
6. **Recordkeeping.** ICE LEOs will create and maintain a Record of Proceeding which will be included as part of the Alien Registration File (A-File) or Case File for qualifying U.S. citizens, as applicable.
7. **Authorities/References.**
  - 7.1. INA §§ 240B(d); 274C; 274D.
  - 7.2. 8 C.F.R. pts. 270; 280.
  - 7.3. Civil Monetary Penalty Adjustments for Inflation, 83 Fed. Reg. 13826 (Apr. 2, 2018) (updated annually).
  - 7.4. DHS Delegation No. 7030.2, *Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement* (Nov. 13, 2004).
  - 7.5. ICE Delegation No. 0001, *Delegation of Authority to the Directors, Detention and Removal and Investigations, and to Field Office Directors, Special Agents in Charge and Certain Other Officers of the Bureau of Immigration and Customs Enforcement* (June 6, 2003).
  - 7.6. ICE Delegation No. [INSERT], *Delegation of Authority to Administer and Enforce Provisions Relating to Civil Penalties for Failure to Depart* (INSERT DATE).
8. **Attachments.** None.
9. **No Private Right.** This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended

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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.

(b)(6); (b)(7)(C)

~~Thomas D. Homan~~  
~~Acting Director~~