



Office of the Deputy Attorney General
Washington, D.C. 20530

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MEMORANDUM FOR COMMISSIONER
IMMIGRATION AND NATURALIZATION SERVICE

DIRECTOR
FEDERAL BUREAU OF INVESTIGATION

DIRECTOR
UNITED STATES MARSHALS SERVICE

UNITED STATES ATTORNEYS

FROM: THE DEPUTY ATTORNEY GENERAL 

SUBJECT: Guidance for Absconder Apprehension Initiative

A. Introduction

This memorandum is directed to those Department of Justice agencies that will be primarily responsible for implementing the Absconder Apprehension Initiative ("the Initiative"). The objective of this Initiative is to locate, apprehend, interview and deport a group of alien fugitives known as "absconders." These absconders are aliens who, though subject to a final order of removal, have failed to surrender for removal or to otherwise comply with the order. The Immigration and Naturalization Service ("INS") has determined that there are approximately 314,000 such individuals.

While the INS will ultimately undertake to deport all 314,000 from the United States, there are several thousand among that group who come from countries in which there has been Al Qaeda terrorist presence or activity. We want to focus our initial efforts on these priority absconders, as we believe that some of them have information that could assist our campaign against terrorism. Among these priority absconders is a group of fewer than a thousand, many of whom appear to be convicted felons, who will constitute the first list of absconders we will ask you to investigate.

The purpose of this memorandum is to explain the process for apprehending and interviewing the priority absconders. That process will involve the following steps: (1) entry of the absconders into the National Crime Information Center database ("NCIC") by the INS; (2) assignment of the absconders by judicial district, based on the most current address information; (3) transmission of the relevant portions of each absconder's INS file to the INS Field Office in the assigned district; (4) assignment of the absconder fugitive investigations to apprehension teams

consisting of INS, Federal Bureau of Investigation ("FBI") and other federal agents and, where appropriate, members of the Anti-Terrorism Task Forces ("ATTFs"); (5) apprehension of the absconders; (6) interviews of the absconders by the apprehension teams; (7) entry of the results of the interviews into the database; and (8) prosecution or removal of the absconders.

While there are aspects of this Initiative that are similar to the Interview Project that was recently conducted by the ATTFs, I want to make clear that this is a very different undertaking. The Interview Project was directed at individuals who were not suspected of involvement in criminal activity, and investigators' contacts with the individuals were entirely consensual. This Initiative, by contrast, is directed at persons who have violated the law by remaining in the country after issuance of a deportation order and, in some cases, by committing other criminal offenses. Unlike the subjects of the Interview Project, therefore, these absconders are to be apprehended and treated as criminal suspects, and they are to be afforded all standard procedural rights and constitutional protections. In addition, while the Department and certain United States Attorneys' Offices intentionally publicized the Interview Project, this Initiative will not entail any official notice to either the public or the absconders. It would be counterproductive, and potentially dangerous, to provide the absconders with official warning that agents and officers will be seeking to locate and capture them.

This Initiative will require a sustained and vigorous effort by a number of federal law enforcement agencies. As the agency tasked with enforcement of the immigration laws, the INS will be the lead investigative agency in all phases of the Initiative. The United States Attorneys will be responsible for coordinating the assignment of ATTF members to the apprehension teams, ensuring that the results of interviews of captured absconders are entered into the database, and handling any prosecutions arising out of this Initiative. The FBI Field Offices and their Joint Terrorism Task Forces ("JTTFs") will actively participate in the apprehension effort, and they will be responsible for assessing each arrested absconder to determine whether the FBI has an interest in that absconder as a criminal suspect or as a source of information. Finally, it is expected that the United States Marshals Service ("USMS"), with its vast experience in capturing federal fugitives, will play a significant role in the apprehension effort.

B. The Process

1. Creation of the List of Absconders

The Foreign Terrorist Tracking Task Force ("FTTTF") drew the names of the priority absconders from the INS' Deportable Alien Control System ("DACS"). In order to finalize the list, the FTTTF is currently completing the following tasks: (1) running the absconders on the list through public source databases to determine a last known address in the United States; (2) using the last known address information to designate an investigating district for each absconder; (3) cross-checking the entire list against the PENTTBOM investigation database to determine whether any of these absconders has previously been identified as having a connection to that investigation; and (4) cross-checking the entire list against the FBI's other databases to determine if any of the

absconders has been entered as a subject or target of any other investigation. If there is a match for any absconder in the PENTTBOM database or the other FBI databases, the FTTF will remove that absconder from the list for this Initiative. This filtering process will help to ensure that the list of absconders does not include individuals who are subjects of active terrorism investigations.

2. Entry of the Absconders into NCIC

The FTTF will transmit the finalized list of priority absconders to the INS Headquarters Investigations Division, where agents will obtain and examine the absconders' INS Administrative Files ("A-Files"). Agents will confirm that each A-file contains documentation reflecting that the absconder had received notice that he was to be deported or, for those absconders who failed to appear at their deportation hearings, that he would be deported if he so failed to appear. After confirming that the absconder was on notice and that the deportation warrant remains valid, the agents at the Investigations Division will transmit the absconders' A-Files to the INS Law Enforcement Support Center in Burlington, Vermont for entry of the absconders' names into NCIC. At the same time, the list of absconders assigned to each district will be distributed to the INS and FBI Field Offices and to the United States Attorney's Office in each district.

3. Transmission of Documents from the Absconders' A-Files

The INS will create a "fugitive folder" for each absconder on the list. These folders will contain duplicates of relevant documents from the absconder's original A-File. INS Headquarters will then transmit the fugitive folder for each absconder to the INS Field Office in the judicial district of the absconder's last known address. If no last known address information exists, the fugitive folder will be sent to the district of the office of origin for the alien's deportation proceeding.

4. District Coordination Meeting

Each INS and FBI Field Office will appoint an Initiative Coordinator who will be responsible for overseeing his or her agency's involvement in the Initiative in that district. Prior to receipt of the fugitive folders, these Coordinators will meet with the United States Attorney's Anti-Terrorism Coordinator to discuss plans for implementation of the Initiative. At those meetings, the three Coordinators should: (1) make arrangements for consultation among themselves throughout the apprehension process; (2) determine how to staff each of the "apprehension teams," consistent with the guidance below; (3) decide who will check the list of absconders against local and/or state criminal databases; (4) discuss how to handle fugitive investigations that extend outside the district; and (5) decide any other logistical issues relating to timely implementation of this Initiative.

5. Assignment of Absconder Cases to the Apprehension Teams

Upon receipt of the absconder fugitive folders, the INS Coordinator must contact his or her

counterparts at the FBI and the United States Attorney's Office. The three Coordinators should then jointly decide how to staff the apprehension teams. The composition of the apprehension team assigned to each absconder will vary from district to district, depending upon agency staffing, the number of open absconder cases in the district, and the Coordinators' judgment about the appropriate manner of making assignments. If the INS and FBI in a particular district lack the manpower to conduct the fugitive investigations and apprehensions in a timely manner -- or if their agents are occupied with other investigations -- the United States Attorney will solicit assistance from the members of the Anti-Terrorism Task Force in that district.

The apprehension teams will each be provided with copies of the fugitive folder and any relevant background material for each absconder, a copy of the interview questions and any operational instructions developed by the Coordinators.

6. Apprehension of the Absconders

Every absconder who is located will be apprehended and taken into custody. The legal basis for that custody may differ depending on the law enforcement members on the apprehension team. If INS is represented on the apprehension team, the absconder can be arrested pursuant to the INS' authority under 8 U.S.C. §1357 to arrest individuals on the basis of the civil warrant of deportation or removal. Because only INS agents have that clear authority, apprehension teams that do not include INS agents may not arrest absconders solely on the basis of the civil warrant. Instead, they can arrest absconders on the basis of probable cause that the absconder has committed the federal felony violation of Failure to Depart under 8 U.S.C. § 1253. The probable cause that the absconder has committed that offense would be based on the existence of a final deportation order and the absconder's presence on American soil.

7. Interviewing the Absconders

When an absconder is arrested, the arresting officers or agents will interview him about his knowledge of terrorist activity. The absconder should be advised of his rights under *Miranda v. Arizona* prior to the interview, and the interview should proceed only if he waives these rights.

The interview should follow the list of questions that will be provided to all Anti-Terrorism Coordinators for distribution to the apprehension teams. This list of questions will be similar to the topics covered in the Interview Project. Following any interview, the investigators conducting the interview must provide the written results to the Anti-Terrorism Coordinator in the United States Attorney's Office, who will ensure that the information is entered into the Computerized Reporting System that was developed and used in the Interview Project.

Investigators conducting interviews should feel free to use all appropriate means of encouraging absconders to cooperate, including reference to any reward money that is being offered and reference to the availability of an "S Visa" under the Responsible Cooperators Program for alien informants. Investigators should fully explain these inducements, but should be careful not

to promise that they will be forthcoming in a particular case. Additional information about the Responsible Cooperators Program will be provided to the Anti-Terrorism Coordinators for further dissemination.

8. Custody of the Absconders

In those instances where an INS agent is not physically present at the time of an absconder's arrest, the INS should be contacted immediately by the arresting investigators, so that arrangements can be made to take the absconder into INS custody. When an absconder is taken into custody, he will usually be subject to prompt removal without further proceedings. In the ordinary case, the absconder will be held until the INS can complete the processing of travel documents, at which point he will be sent out of the country. If a particular absconder is to be the subject of further investigation or prosecution, the involved agencies will need to make quick decisions regarding the basis for continued custody of the absconder.

9. FBI Assessment of the Absconders

At the time that an absconder is taken into INS custody, the INS Coordinator must notify the FBI Coordinator of the arrest. Once notified, the FBI Coordinator must expeditiously review the absconder's case and the results of his interview and determine whether it appears that the absconder has any ties to or knowledge of terrorism that would justify further contact with the absconder by the FBI. In reaching this determination, the FBI Coordinator must be mindful of the INS' responsibility to remove absconders from this country in an expeditious fashion. Given that the INS might be working under a restrictive time frame, the FBI Coordinator will often have to base his or her determination on an oral report of the interview from the interviewing investigator and/or the INS Coordinator without the benefit of a written report. The FBI Coordinator will then determine if there is reason to investigate the absconder further. If so, he or she must immediately notify the INS Coordinator and the United States Attorney's Anti-Terrorism Coordinator of the FBI's desire to conduct further investigation prior to deportation.

10. Prosecution of the Absconders

At the time that an absconder is taken into INS custody, the INS Coordinator must also notify the Anti-Terrorism Coordinator of the arrest. The Anti-Terrorism Coordinator will then decide whether to proceed with a prosecution for Failure to Depart under 8 U.S.C. § 1253, or to forgo prosecution and allow the absconder to be deported by the INS. In deciding whether there is a law enforcement interest in pursuing a prosecution against a particular absconder, the United States Attorney's Office should consider whether the absconder has engaged in criminal conduct, aside from the immigration violation, during his stay in this country.

If the decision is to prosecute, the United States Attorney's Office will file charges and ensure that the absconder is presented before a federal magistrate. In those instances where the absconder was initially arrested on probable cause that he had violated 8 U.S.C. § 1253, he must

be taken before the nearest federal magistrate judge without unnecessary delay. In those instances where he was arrested by the INS on the civil warrant, the absconder need only be presented when and if criminal charges are filed. If the decision is not to prosecute, the absconder will be deported in accordance with standard INS procedures.

11. Deportation of the Absconders

Absent an affirmative notification from the Anti-Terrorism Coordinator or the FBI Coordinator of the desire to undertake further investigative or prosecutive action against the absconder, the INS will make every effort to remove the absconder from the country as quickly as possible.

12. Absconder Investigations Outside the Initial Investigating District

It will often become necessary to pursue leads for an absconder outside of the initial investigating district. As lead agency, it will be the responsibility of the INS to determine how best to conduct that investigation. In those instances where there are only isolated leads outside the district, or where the leads are in a nearby district, the INS Coordinator may determine that it is more efficient for the original apprehension team to pursue those leads. In those instances where the apprehension team determines that the absconder has moved to a distant district, the INS Coordinator would probably transfer the case to the INS Field Office in that district. In deciding whether to shift the investigation to another district, the INS Coordinator should always consult with and consider the views of the apprehension team members who are assigned to that investigation. Also, whenever the INS Coordinator decides to transfer an investigation to another district, he or she must communicate with INS headquarters, so that the fugitive folder may be re-assigned, and with the Anti-Terrorism Coordinator and the FBI Coordinator, so that they can alert their counterparts in the other district.

13. Tracking of Absconder Cases

The results of any interview with an absconder will be provided to the Anti-Terrorism Coordinator in each district, who will ensure that the results are entered into the Computerized Reporting System. The Anti-Terrorism Coordinator will provide the Executive Office for United States Attorneys regular reports on the number of absconders apprehended and interviewed in each district and the status of any prosecutions arising from this Initiative. In addition, the INS will be responsible for tracking each absconder's case following apprehension, and providing my office with regular reports on the number and timing of those removed under this Initiative.

C. Legal Issues

1. Authority of Law Enforcement Officers to Effect Arrests

There is no question about the legal authority of federal agents to participate in arresting these absconders, as the United States Code specifically authorizes agents of the FBI and deputies

of the USMS to make warrantless arrests for federal violations where probable cause exists. In many districts, however, I expect that state and local law enforcement members of the ATTF will also participate in this effort. Their legal authority is less clear, as some states and municipalities place certain restrictions on the extent to which their officers can be involved in enforcement of the immigration laws. The INS has researched this issue on a state-by-state basis, and the Director of the Executive Office of United States Attorneys (EOUSA) will arrange a conference call with the fifty State Attorneys General to discuss this issue. The INS research will be shared with the Anti-Terrorism Coordinator for each district.

2. Consular Notification

In connection with the arrest of these absconders, the United States has certain obligations under the Vienna Convention on Consular Relations (VCCR). Under the VCCR, every foreign national arrested or detained within the United States must be informed that consular officials of his/her country of nationality may be notified of the detention. If the foreign national "so requests," or if the detainee is a national of a "mandatory notification" country, the appropriate consular officials are entitled to be notified and to have access to their incarcerated nationals. The INS Coordinator in each district will be responsible for making consular notification, in accordance with existing INS guidelines.

D. Implementation Deadlines

This Initiative is to be implemented by taking the following steps within the designated deadlines:

- 1. The ATTF will finalize the list of priority absconders on or before January 25, 2002.**
- 2. The INS, the FBI and EOUSA will send to their offices in each district the initial list of priority absconders assigned to that district on or before January 28, 2002.**
- 3. The Director of EOUSA, members of my staff and the Anti-Terrorism Coordinators will hold a conference call concerning the Initiative on January 29, 2002.**
- 4. The Anti-Terrorism Coordinator and the INS and FBI Coordinators in each district will meet to discuss implementation of this Initiative in their district on or before January 31, 2002.**
- 5. The INS Law Enforcement Support Center in Burlington, Vermont will have the first group of priority absconders entered into NCIC, and their fugitive folders will be distributed to the appropriate districts on or before February 1, 2002.**

6. **The Anti-Terrorism Coordinator and the INS and FBI Coordinators in each district will assign apprehension teams for all absconders on their list and distribute the fugitive folders and interview questions to those apprehension teams on or before February 11, 2002.**