

HOW TO GET YOUR DETENTION OR REMOVAL REVIEWED UNDER THE JOHNSON MEMO

What is the Johnson Memo?

On February 18, 2021, Immigration and Customs Enforcement (ICE) issued a memo called the Johnson Memo. The Johnson Memo tells ICE officers how to decide who they should prioritize for enforcement actions like arrests, detentions, and removals. The Johnson Memo is in effect until Department of Homeland Security (DHS) Secretary Alejandro Mayorkas issues new enforcement guidelines, which should happen by May 19, 2021. **The Johnson Memo is important because you can ask for review of whether you should be detained and/or removed.**

The Johnson memo covers ICE's decisions including:

- Whether to stop, question or arrest a noncitizen;
- Whether to start or cancel removal proceedings against a noncitizen;
- Whether to keep a noncitizen detained;
- Whether to release a noncitizen from custody, subject to conditions; and,
- When and under what circumstances to deport someone with a final order of removal.

How can the Johnson Memo help me?

The Johnson Memo lists three categories of cases that are presumed priorities. If ICE decides that you fall within one of these categories, ICE can take an enforcement action—like detaining you or deporting you—without seeking pre-approval. **But if you do not fall within one of these categories, ICE must review your case and decide whether to continue with the enforcement action. You can also ask ICE to review your case under the Johnson Memo.**

What are the priority categories for detention and removal?

There are three priority categories:

- **Priority Category 1: National Security.**
 - Engaged in or suspected of engaging in terrorism-related or espionage-related activities; or
 - Otherwise necessary to protect national security.

General criminal activity *does not* amount to a national security threat (but it could fall under the Public Safety Priority Category 3, below).

- **Priority Category 2: Border Security.**
 - A noncitizen is *presumed* to be a border security enforcement and removal priority if:
 - Arrested at the border or a port of entry while attempting to enter the country unlawfully on or after November 1, 2020; or
 - Not physically present in United States before November 1, 2020.
- **Priority Category 3: Public Safety.**
 - Must pose a threat to public safety *and*:

- Have been convicted of aggravated felony as defined in INA § 101(a)(43); or
- Been convicted of an offense with active gang participation as an element *or* 16 years old or older and “intentionally participated in an organized criminal gang or transnational criminal organization to further the illegal activity of the gang or transnational criminal organization.”

How does ICE decide who is a public safety threat?

In evaluating whether the person poses a threat to public safety, ICE officers must consider:

- **Criminal history** (like the recency, severity, and extensiveness of your criminal history);
- **Positive factors**, such as:
 - **Personal and family circumstances;**
 - **Health and medical factors;**
 - **Ties to the community;**
 - **Evidence of rehabilitation;** and
 - **Whether you have potential immigration relief available.**

The Johnson Memo tells officers to pay particular attention to the cases of the following individuals:

- Who are elderly or are known to be suffering from serious physical or mental illness;
- Who have pending petitions for review on direct appeal from an order of removal;
- Who have filed only one motion to reopen removal proceedings; or
- Who have pending applications for immigration relief and are appear to be eligible for such relief.

What happens if my deportation officer thinks I am in a priority category?

If your deportation officer thinks you are in a priority category, the officer can take enforcement action—like detaining you while your immigration case is being heard or deporting you if you have a final order—without getting any special permission.

If you think the officer is wrong and you are not in a priority category, you can ask for a review of your case. See below.

What happens if my deportation officer thinks I am not in a priority category?

For cases that do not fall in one of the three priorities (national security, border security, public safety), the officer has to get pre-approval from the ICE Field Office Director or Special Agent in Charge to take an enforcement action against you. The ICE officer must explain in writing why you should be detained, deported, etc. The fact that you are not in a priority category does not mean that ICE cannot take an enforcement action against you, but it does mean that the officer has to explain *why* that action is justified.

How can I get my case reviewed under the Johnson Memo?

If you (or a family member/friend) think you **DO NOT** meet ICE’s priorities for enforcement, detention, or deportation, you can ask for your case to be reviewed. You can use this process to ask for release from detention and/or to ask to stop your deportation. ICE will prioritize reviewing cases from people who are detained or who are scheduled to be removed soon. It is not clear how long it will take till you hear back.

What should I include in the review request?

Your application is a chance to explain why you (or your family member/friend) does not fall into the priority categories of national security, border security or public security. If you have an immigration attorney, talk to your immigration attorney about submitting the request for review.

If you are submitting the request yourself, make sure to include your A-number, other identifying information, and if possible a telephone number and email where your are a family member/friend can be reached.

In your application, you should explain:

- Why you are **not a risk to public safety**. If you do not have a criminal history, explain that. If you do have a criminal history, try pointing to things like how long ago your offenses were, if they were non-violent, and/or that you successfully completed any probation/jail/prison sentence.
- **Health and medical factors**, like whether you are elderly or have serious medical or mental health issues.
- **Positive factors**, such as:
 - **Personal and family circumstances;**
 - **Ties to the community;** and
 - **Evidence of rehabilitation.**
- **If you are asking for release, where you will go.**

You can include letters of support or other information that you think helps your case.

This packet includes sample letters asking for review under the Johnson Memo.

Where do I send my request?

There are two levels of review: review by the Field Office and review by an ERO Senior Reviewing Official. You have to request review by the Field Office first.

1. Field Office Review.

You should contact:

Detroit ICE ERO
(313) 568-6049*
Detroit.Outreach@ice.dhs.gov

If you are detained, you can send a request to your deportation officer instead of calling the phone number or e-mail address above.

*You can call ICE, but we strongly encourage written requests because you can attach additional documents and send the request at any time. If you call, you can only do so between the hours of 8:00 AM to 3:00 PM, Monday through Friday

2. Review by ERO Senior Reviewing Official

After contacting the field office, you may also initiate the ICE Case Review process by emailing the ERO Senior Reviewing Official to request a case review at **ICEcasereview@ice.dhs.gov** if you do not receive a timely response.

ICE's Case Review website, **www.ice.gov/ICEcasereview**, offers additional information.

In order to provide information to someone other than the detainee, ICE requires a completed **Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative (for attorneys)**, or **ICE Form I-60-001, Privacy Waiver Authorizing Disclosure to a Third Party (for friends/family)**. **Form I-60-001** is available at www.ice.gov/forms. Include the detainee's A number, identifying information, your telephone number and e-mail address.

How can I report other problems in detention?

ICE now has Detention Reporting and Information Line:

(888) 351-4024
8 AM to 8 PM (EST)
Monday to Friday
Spanish operators available
Language assistance available

Live operators are available to answer questions from people in ICE detention and from community members. Call center representatives are to answer calls and assist with resolving issues such as:

- Sexual or physical assault or abuse;
- Serious or unresolved problems in detention;
- Reports of victims of human trafficking and other crimes;
- Reports on individuals with serious mental disorders or conditions;
- Separation of minor child or other dependent and other parental related issues;
- Assistance with legal access issues when your local ERO field office is unable to assist;
- Requests for basic case information; and
- Reports that someone in detention has a serious mental disorder or condition.

Note: Operators cannot provide information about scheduling of deportation.

Date/fecha: _____

ICE ERO Assistant Field Office Director
Detroit Field Office
333 Mt. Elliott Street
Detroit, MI 48207

Re: Request for Review Under Johnson Memo Priorities

Name/nombre: _____

A#/numero A: _____

I am writing to request that my case be reviewed pursuant the priorities identified in the February 18, 2021 “Interim Guidance: Civil Immigration Enforcement and Removal Priorities” announced by ICE Acting Director Tae D. Johnson (“Johnson memo”).

The Johnson memo recognizes that we are facing “the most serious global public health crisis in a century” and directs DHS to focus its resources on implementing “public health guidelines and protocols.” The memos also provide that “DHS *must* implement civil immigration enforcement based on sensible priorities” and directs that these enumerated priorities “*shall* apply . . . to a broad range of [] discretionary enforcement decisions,” including “whom to detain or release.”

The Johnson memo outlines the following priority categories:

1. **National Security:** Individuals engaged/suspected of engaging in espionage or terrorism, or whose arrest/apprehension or custody is otherwise necessary to protect the national security of the United States.
2. **Border security.** Individuals apprehended at the border or ports of entry while attempting to unlawfully enter the United States on or after November 1, 2020, or who were not physically present in the United States before November 1, 2020.
3. **Public safety.** Individuals who have been convicted of an “aggravated felony”, and are determined to pose a threat to public safety; have been convicted of a crime involving gang participation; or are over 16 and intentionally participated in a gang activity that furthered illegal activity.

Even where individuals fall within these categories, ICE guidance states that individuals in the following categories should not be subject to enforcement action unless there is a compelling reason for such action.

1. Individuals who have pending petitions for review on direct appeal from an order of removal; have filed only one motion to reopen removal proceedings, and such a motion either remains pending or is on direct appeal via a petition for review; or have pending applications for immigration relief and are prima facie eligible for such relief.
2. Individuals who are elderly or are known to be suffering from serious physical or mental illness.

Please check the boxes that apply/*Marca las cajas que se aplican:*

I am requesting review of/*estoy solicitando revisión de:*

- My detention/*mi detención*
- My scheduled deportation/*mi próxima deportación*

Please check the boxes that apply/*Marca las cajas que se aplican:*

I do not fall within the Johnson memo priorities because/*Soy fuera de las prioridades del memo de Johnson porque:*

- I am not a national security risk/*No soy una amenaza a la seguridad nacional*
- I entered the United States before November 1, 2020/*Entré a los Estados Unidos antes del 1 de noviembre de 2020*
- I am not a risk to public safety / *No ha sido hallado culpable de ningún crimen*
- I am 50 years old or older / *Tengo 50 años o más.*

My age is: _____

- I suffer from a serious physical or mental illness/*Sufro de una enfermedad física o mental grave*

I have these health conditions/*Tengo estas condiciones de salud:*

Medications I take/ *Medicamentos que tomo:*

Criminal history/ *Historia criminal*

I do not have any convictions / *No tengo antecedentes penales*

I have a criminal history but I am not a threat to public safety because (explain):
Tengo antecedentes penales pero no soy una amenaza para la seguridad pública porque (explique)

I have lived in the United States since / *He vivido en los E.E.U.U. desde*

I have been detained since / *He estado detenido desde:*

I believe I qualify for the following immigration relief /*Creo que califico para el siguiente alivio de inmigración*

My plan if released/*Mi plan si salgo de detención:*

(Include where you will live, the address and name/phone number of person you will live with if possible. Include information about how you will get to that place. If you plan to go to a rehab program or shelter, please include the name and why you believe they will accept you. *Incluye donde va a vivir, la dirección y el nombre/número de teléfono de la persona con quien vivirá si es posible. Incluye información de cómo llegará a ese lugar. Si tu plan es entrar a un centro de rehabilitación o albergue, por favor escribe el nombre del lugar y porque cree que te van a permitir entrar.*)

Additionally, I believe that my release is in the public interest for the following reasons:
(Please list other reasons you think ICE should release you. Examples: US citizen or permanent resident family members, children who are dependent on you for support, work history, immigration relief that you qualify for like asylum or cancellation of removal; rehabilitation programs or classes you completed. *Escribe cualquier otra razón que cree que ICE debe liberarte. Ejemplos: miembros de su familia quien tienen ciudadanos o residentes permanentes, hijos que dependen en su apoyo financiero; historia de empleo; beneficio de inmigración que se puede solicitar como asilo político o cancelación de deportación; programas de rehabilitación o clases que cumplió.*)

Thank you for reviewing my request. I also request that, should you deny my request, you provide me a decision in writing explaining the reasons for the denial.

Sincerely,

_____ (sign here/*firma aqui*)