

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1007

Milk in the Southeast Marketing Area

CFR Correction

In Title 7 of the Code of Federal Regulations, parts 1000 to 1199, revised as of January 1, 2001, in § 1007.7, paragraph (c) is revised to read as follows:

§ 1007.7 Pool plant.

* * * * *

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

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[FR Doc. 01-55533 Filed 10-31-01; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 3

[INS No. 2172-01; AG Order No. 2528-2001]

RIN 1115-AG41

Executive Office for Immigration Review; Review of Custody Determinations

AGENCY: Immigration and Naturalization Service, Justice; and Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the regulations of the Executive Office for Immigration Review (EOIR), by expanding the existing regulatory provision for a temporary automatic stay of an immigration judge's decision to order an alien's release in any case in which a district director has ordered that the alien be held without bond or has set a bond of \$10,000 or more, to maintain the status quo while the Immigration and Naturalization Service seeks expedited review of the custody order by the Board of Immigration Appeals (Board) or by the Attorney General.

DATES: *Effective date:* This interim rule is effective October 29, 2001.

Comment date: Written comments must be submitted on or before December 31, 2001.

ADDRESSES: Please submit written comments to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2172-01 on your correspondence. The public may also submit comments electronically to the Service at insregs@usdoj.gov. When submitting comments electronically, please make sure that you include INS No. 2172-01 in the subject field. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: For matters relating to the Executive Office for Immigration Review: Chuck Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Falls Church, VA 22041, telephone (703) 305-0470 (not a toll-free call). For matters relating to the Immigration and Naturalization Service: Daniel S. Brown, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone (202) 514-2895 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 236 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1226, authorizes the Attorney General to

determine whether to hold an alien in custody while proceedings are pending to determine whether an alien is to be removed from the United States. As a general principle, whether to detain an alien or to release the alien on bond or other appropriate conditions is a matter entrusted to the Attorney General's discretion. Under section 236(c) of the Act, however, certain aliens are subject to mandatory detention during the course of proceedings to determine their removal. These generally include individuals who are inadmissible or deportable due to the commission of specified crimes or due to having engaged in terrorist activity.

More than a century ago, the Supreme Court upheld detention as a necessary aspect of the exclusion or expulsion of aliens. *Wong Wing v. United States*, 163 U.S. 228, 235 (1896); see also *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure. Otherwise aliens arrested for deportation would have opportunities to hurt the United States during the pendency of deportation proceedings."). An alien's interest in being at liberty during the course of immigration proceedings is "narrow" and "circumscribed by considerations of the national interest." *Doherty v. Thornburgh*, 943 F.2d 204, 208, 208, 209 (2d Cir. 1991). "An alien's freedom from detention is only a variation on the alien's claim of an interest in entering the country." *Clark v. Smith*, 967 F.2d 1329, 1332 (9th Cir. 1992).

Section 236 of the Act confers discretion upon the Attorney General to determine the custody of aliens who are in proceedings as long as they are not subject to the mandatory detention provisions of section 236(c) of the Act. The detention of aliens during the pendency of the immigration proceedings serves two essential purposes: ensuring removal by preventing the alien from fleeing, and protecting the public from potential harm.

Under the regulations, the Immigration and Naturalization Service (Service) makes the initial custody decision in each case—that is, whether to keep the alien in detention pending completion of the removal proceedings, or whether to release the alien on bond or other appropriate conditions. The alien, however, may ask an immigration judge to review the custody decision,