

Legal Sidebar

The Legal and Practical Effects of Private Immigration Legislation and Recent Policy Changes

06/30/2017

For many years, private immigration bills have served as the last step to prevent the removal of certain aliens who are subject to final orders of removal. Generally, this practice has been reserved for a very small group of aliens who, while having been deemed by the private bills' sponsors to have extraordinary [equities](#) in the United States, are also—for whatever reason—statutorily ineligible for any relief under existing federal immigration laws. Supporters of the use of private immigration bills argue that they serve as “[a critical safety net](#)” in situations where the aliens' removal would result in great hardship for their families in this country. On the other hand, opponents contend that private bills [undermine](#) the fair and uniform administration of the nation's immigration laws.

Generally, the goal of a private immigration bill is to confer [lawful permanent resident](#) status on an alien beneficiary, thus bypassing the normal procedures to obtain such status in this country. By contrast, most aliens who wish to legalize their status have to apply for [adjustment of status](#) based on an approved visa petition, and demonstrate their [admissibility](#) for permanent residence (or if they are in removal proceedings, they may apply for [cancellation of removal](#) if they can meet certain statutory requirements). Nevertheless, private immigration bills have rarely been passed by Congress. In fact, out of nearly 400 such proposed bills within the last ten years, only a [few](#) have been [signed](#) into [law](#).

When a private immigration bill is introduced, the identified alien's legal status remains unchanged. However, it had been a longstanding policy for Immigration and Customs Enforcement (ICE) (and before that, the Immigration and Naturalization Service) to authorize a [stay of removal](#) upon receiving a request for a report on information about the alien from either the Senate or House subcommittee where the private bill is referred. Until recently, after receiving the request, ICE would typically [grant](#) a stay until Congress took action on the private immigration bill, or, if no action was taken, until February 1 of the first session of the next Congress. The agency also could [extend](#) the stay of removal beyond that period. With the stay in place, the alien could remain in the United States pending the bill's disposition in Congress, and, if ICE granted him or her [deferred action](#), the alien could receive work authorization during this period. Further, the sponsor of the private immigration bill could [reintroduce](#) the bill in the new Congress, and potentially start the stay process all over again. Consequently, through repeated introduction of a private immigration bill, an alien's removal could be [postponed](#) for many years.

On May 5, 2017, however, ICE's Acting Director Thomas D. Homan sent a [letter](#) to Senator Charles Grassley, the Chairman of the Senate Judiciary Committee, advising of immediate changes to the agency's policy with respect to stays of removal pending the outcome of private immigration bills. Homan expressed [concern](#) that the long-standing stay process could thwart ICE's efforts to remove aliens who, under the Trump Administration [policy](#), are priorities for removal, such as criminal aliens, aliens who have committed fraud, aliens who have abused a public benefits program, aliens subject to a final order of removal, and aliens “who pose a risk to public safety or national security.”

Homan thus [announced](#) four “policy changes” with respect to private immigration bills: (1) ICE will only grant a stay of removal if the House or Senate committee/subcommittee expressly makes a *written request for a stay of removal* “independent of any request for an investigative report”; (2) ICE will not grant an alien more than *one* stay of removal during the private immigration bill process, and will not consider subsequent stays requests from the House or Senate committee/subcommittee; (3) ICE will grant a stay of removal for only *six months*, but, upon request by the House or

Senate committee/subcommittee, may issue a one-time 90 day extension “to accommodate extenuating circumstances”; and (4) ICE will take “appropriate action,” including the removal of the alien, if it receives “derogatory information” about the alien after granting a stay.

Therefore, while private immigration bills have previously delayed an alien’s removal from the United States—sometimes indefinitely—ICE’s new policy markedly changes that established procedure. Aliens who are the beneficiaries of private immigration bills can no longer count on automatic stays of removal as their respective bills wind their way through the legislative process. Moreover, even if ICE is willing to grant a stay of removal, such a stay will be more limited in duration than in the past. Given these developments, Congress may be urged to modify its own existing rules governing the private immigration bill process to ensure that aliens seeking to benefit from such legislation receive prompt consideration by the agency of their requests to remain in the United States during that process. In addition, ICE’s change in policy may encourage some Members of Congress to work to expedite the disposition of private immigration bills in the future—potentially increasing the likelihood that some of these bills will be acted upon before the agency takes action. Congress also may consider legislative initiatives that would offer some removable aliens alternative and more practical ways to legalize their status and remain in this country.

Posted at 06/30/2017 10:02 AM