



LEONIDAS RALPH MECHAM  
Director

ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

NOEL J. AUGUSTYN  
Assistant Director

CLARENCE A. LEE, JR.  
Associate Director

WASHINGTON, D.C. 20544

Office of Court Administration



May 25, 2005

TO: CLERKS, UNITED STATES COURTS OF APPEALS  
CLERKS, UNITED STATES DISTRICT COURTS

SUBJECT: REAL ID ACT OF 2005: Aliens Challenging Removal, Deportation  
Or Exclusion

As some of you may know, the "Real ID Act of 2005" was signed into law (Pub. Law No. 109-13) on May 11, 2005, as Division B of the *Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005*, and became effective on the date of enactment. Though there are a number of important provisions that courts may wish to review, the Real ID Act has a specific impact upon both district and appellate clerks' offices with respect to "cases in which the final administrative order of removal, deportation, or exclusion was issued before, on, or after the date of enactment." Title I, Section 106(c) of the Act states:

**TRANSFER OF CASES.**— If an alien's case, brought under section 2241 of title 28, United States Code, and challenging a final administrative order of removal, deportation, or exclusion, is pending in a district court on the date of the enactment of this division, then the district court shall transfer the case (or the part of the case that challenges the order of removal, deportation, or exclusion) to the court of appeals for the circuit in which a petition for review could have been properly filed under section 242(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1252), as amended by this section, or under section 309(c)(4)(D) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note). The court of appeals shall treat the transferred case as if it had been filed pursuant to a petition for review under section 242, except that subsection (b)(1) of such

section shall not apply.

This new law applies only to cases brought under Section 2241 by aliens challenging removal, deportation, or exclusion. It does not apply to those cases challenging detention.

The courts will need to develop procedures to implement the Act's requirement that "...the district court shall transfer the case". Certainly, one option for the district courts is for judges to initiate a review of all of these cases and prepare the transfer orders when appropriate. As an alternative, courts could require counsel to initiate the process. Administrative Office staff have been advised by Department of Justice personnel that some U.S. Attorneys' offices already have begun preparing transfer order motions in these cases. If this is occurring, the district courts should coordinate with the local U.S. Attorney regarding the process to be followed for transferring these cases, including how these cases will be identified and how and when the transfer will be initiated. In addition, the courts will need to determine how to proceed if only part of the case is transferred, and how the court of appeals would handle a stay of deportation or removal entered by the district court.

At the same time, the district courts should coordinate with the clerk of the appropriate appellate court regarding transmittal of all case-related records and the process for providing a complete certified record of these cases. District clerks also should note that the Section 106(c) requirement to transfer the case "to the court of appeals in the circuit in which a petition for review could have been properly filed" raises an issue of venue, since the case may need to be transferred to another circuit. Many district courts have not required the full certified agency record in these cases, but instead they have relied on the Board of Immigration Appeals order and supporting documents. The process for obtaining and transmitting the full certified record to the court of appeals must be worked out with the Department of Justice, since the appellate courts will likely require the full certified record. This is particularly important, as it may take Department of Justice offices several weeks or more to compile their records.

Finally, please note that the Act does not impose the collection of any new fees for the transferred petitions for review.

If appellate clerks have questions regarding the content of this memorandum, they should contact Gary Bowden, Chief, or Gloria Malkin, Attorney Advisor, Appellate Court and Circuit Administration Division.

If district courts have questions regarding the content of this memorandum, they should contact their regional administrator in the District Court Administration Division: James L. Caldwell (2<sup>nd</sup>, 9<sup>th</sup> Circuits); Steven Gallagher (1<sup>st</sup>, 5<sup>th</sup>, 10<sup>th</sup>, DC Circuits); David Mercanti (3<sup>rd</sup>, 4<sup>th</sup>, 7<sup>th</sup> Circuits); or, Thomas S. Russell (6<sup>th</sup>, 8<sup>th</sup>, 11<sup>th</sup> Circuits).

A handwritten signature in black ink, appearing to read "Noel J. Augustyn". The signature is written in a cursive style with a prominent initial "N" and a long, sweeping underline.

Noel J. Augustyn

cc: Circuit Executives  
District Court Executives  
Senior Staff Attorneys