



The Effect of Private Immigration Legislation and Recent Policy Changes

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For many years, private immigration bills have served as the last step to prevent the removal of certain aliens (as defined in the [Immigration and Nationality Act \(INA\)](#)) 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. Alternatively, opponents contend that private bills [undermine](#) the fair and uniform administration of the nation’s immigration laws.

In general, the goal of a private immigration bill is to [confer lawful permanent resident status](#) on an alien beneficiary, thus bypassing the typical procedures to obtain such status in this country. By contrast, most aliens who seek to become lawful permanent residents 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. Out of [several hundred](#) such proposed bills within the past 15 years, [few have been signed into law](#).

When a private immigration bill is introduced, the identified alien’s legal status remains unchanged. Prior to 2017, it had been the longstanding policy of the Department of Homeland Security’s Immigration and Customs Enforcement (ICE) (and before that, the Department of Justice’s Immigration and Naturalization Service) to authorize a [stay of removal](#) of the alien upon receiving a request for information about the alien from either the Senate or House Judiciary Committee or Subcommittee where the private bill was referred. (More information about the process for introduction and consideration of private bills in

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Congress can be found in this [CRS report](#) and in the House Judiciary Committee's [Rules of Procedure and Statement of Policy for Private Immigration Bills](#).)

In 2017, during the Trump Administration, ICE's Acting Director Thomas D. Homan sent a [letter](#) to Senator Charles Grassley, then-Chairman of the Senate Judiciary Committee, advising of [changes to the agency's policy](#) with respect to granting stays of removal pending the outcome of private immigration bills. Homan expressed [concern](#) that the longstanding process could thwart ICE's efforts to remove aliens who, under the administration's [policy](#), were considered 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 would only grant a stay of removal if the House or Senate committee/subcommittee expressly made a *written request for a stay of removal* "independent of any request for an investigative report"; (2) ICE would not grant an alien more than *one* stay of removal during the private immigration bill process, and would not consider subsequent stays requests from the House or Senate committee/subcommittee; (3) ICE would grant a stay of removal for only *six months*, but, upon request by the House or Senate committee/subcommittee, could issue a one-time 90 day extension "to accommodate extenuating circumstances"; and (4) ICE would take "appropriate action," including the removal of the alien, if it received "derogatory information" about the alien after granting a stay.

In 2021, under the Biden Administration, ICE announced an "[updated](#)" [policy](#) on private immigration bills that appears generally to return to the agency's previous practice. According to ICE, the agency is "to provide investigative support" when Congress introduces a private bill, and to consider "stays of removal or other remedies" for beneficiaries of a bill in certain cases. Specifically, the appropriate House or Senate committee/subcommittee must submit a written request addressed to the ICE Director (or Acting Director) for an investigative report concerning the beneficiary of the private bill, and the report should be provided to the ICE Office of Congressional Relations. ICE has stated that a response to Congress is to generally occur within 30 to 90 days.

ICE further [announced](#) that, once a private bill is introduced *and* ICE receives a request for an investigative report, it will "temporarily refrain" from engaging in any immigration enforcement actions against the bill's beneficiary (e.g., initiate [removal proceedings](#), execute a final removal order) until the bill is signed into law; or, if Congress adjourns without acting on the bill, until March 15 of the first session of the following Congress. ICE advised that the introduction of a private bill alone (or an indication of an intent to introduce such bill) would not prompt consideration of a stay of removal or other relief for the bill's beneficiary. ICE also advised that it may deny a request for stay of removal or revoke a previous stay, and take enforcement action against an alien who is the subject of a private bill, if there is evidence showing that such action is warranted. ICE indicated that it would notify the appropriate congressional committee when these circumstances occur.

Although ICE's private immigration bill policy may continue to change over time, Congress may consider modifying 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 changing policies may expedite

congressional consideration of private immigration bills—potentially increasing the likelihood that some bills could be acted upon before the agency takes action.

Author Information

Hillel R. Smith
Legislative Attorney

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