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IMMIGRATION
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of the National Lawyers Guild

PRACTICE ADVISORY¹

November 16, 2012

Early Release Programs for Nonviolent Offenders Pursuant to 8 U.S.C. § 1231(a)(4)(B)

By Jonna Cottrell²

Federal law allows for removal of nonviolent offenders in state or federal custody prior to completion of their criminal sentence. 8 U.S.C. § 1231(a)(4)(B) (reprinted in Appendix A). For federal prisoners, the statute requires that the conviction is for a nonviolent offense and that removal is in the best interest of the United States. A prisoner in federal custody cannot yet apply for deportation under this statute because the Attorney General has not, to date, implemented it.

The federal government also authorizes early removal for prisoners in state custody if the chief official responsible for incarcerating noncitizens determines that the noncitizen was convicted of a nonviolent offense and removal is in the best interest of the state. The U.S. Department of Homeland Security (DHS) may remove a noncitizen who meets these criteria at the written request of the state.

At least twenty-two states allow DHS to remove noncitizens convicted of nonviolent crimes before they finish their criminal sentences in accordance with 8 U.S.C. § 1231(a)(4)(B)(ii). To implement the statute, some states enacted legislation, while others created policies through parole boards. Most of the state statutes require that the offense is nonviolent and the convicted noncitizen must complete at least half of their sentence before qualifying for early deportation. U.S. Immigration and Customs Enforcement, a component agency of DHS, has created a program called [ICE Rapid REPAT](#) to work with six states plus Puerto Rico to facilitate early release for nonviolent offenders.

The chart below shows the states with a known early release program. Included are direct links to the corresponding state statute or program. NIPNLG recognizes that this chart will not always remain an accurate compilation of state early release programs. If you become aware of a state

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that has this kind of program and it is not listed here, please email Dan Kesselbrenner at dan@nationalimmigrationproject.org.

State	Program or Statute	Web Link to Program/Statute and Notes
Alabama	None	None known
Alaska	None	None known
Arizona	ICE Rapid REPAT	http://www.ice.gov/news/library/factsheets/rapidrepat.htm
Arkansas	None	None known
California	None	None known
Colorado	C.R.S. 17-22.5-404.7 (2011)	http://www.lexisnexis.com/hottopic/colorado?source=COLO:C ODE&tocpath=1KNFZIPWWQBBSKR6J.2RR4NSKIKK73JDI K3.341LS4BR7IMOU3Y0Q;1OH88M10GVZLQGGHN.2RR0K L02QCPCCKLL00.3VHRRWGM29I4J6UYO;1OTSPPH62LBOB IN5C.2BTDGML6RC4KC62LM.3ZN6NW7F1GZ68VDR7;156 LWN71ZB4LVCS5Y.2HRC0XMEWHVA16Z27.36XXOOXW N8SQ5D0OB&shorthead=no
Connecticut	Conn. Gen. Stat. § 54-125d (2012)	http://www.cga.ct.gov/current/pub/chap961.htm#Sec54-125d.htm
Delaware	None	None known
Florida	None	None known
Georgia	ICE Rapid REPAT	http://www.ice.gov/news/library/factsheets/rapidrepat.htm
Hawaii	None	None known
Idaho	None	None known
Illinois	Public Act 097-0697 Sec. 5-5-3 (1)	http://www.ilga.gov/legislation/publicacts/97/PDF/097-0697.pdf
Indiana	None	None known
Iowa	None	No official state law or policy, but state parole program can informally release noncitizens to an immigration detainee.
Kansas	K.S.A. § 22-3717(g)(2011)	http://rvpolicy.kdor.ks.gov/Pilots/Ntrntpil/IPILv1x0.NSF/865782e7272861a38625655b004e9336/0a6fca5957fdd39f8625798a0069e6cd?OpenDocument
Kentucky	Kentucky Parole Policies and Procedures: Parole Release Hearings (S)(2)	http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CCIOFjAA&url=http%3A%2F%2Fjustice.ky.gov%2FNR%2Frdonlyres%2F77B290C2-F6A5-48FD-B618-022A333A5C9B%2F0%2FKYPB1001ParoleReleaseHearingseff2312.doc&ei=vhFjUMDXHIOT0QGdqdqDACQ&usq=AFQjCNFt1cXZtDUD2ZuyWUDVu3T_B-Iolw&sig2=aMZ3xTFPAKpBRbWWHMXQ5g
Louisiana	None	None known
Maine	None	None known
Maryland	ICE Rapid REPAT	http://www.ice.gov/news/library/factsheets/rapidrepat.htm
Massachusetts	None	None known
Michigan	Michigan Compiled Laws 791.234b	http://legislature.mi.gov/doc.aspx?mcl-791-234b
Minnesota	None	None known
Mississippi	None	None known

Missouri	None	None known
Montana	None	None known
Nebraska	None	None known
Nevada	None	Parole to ICE may be possible through the Nevada Board of Pardons Commissioners.
New Hampshire	ICE Rapid REPAT	http://www.ice.gov/news/library/factsheets/rapidrepat.htm
New Jersey	None	None known
New Mexico	None	No official state law or policy, but probation and parole officers can informally release noncitizens to ICE custody.
New York	ICE Rapid REPAT, New York State Executive Law § 259-i (2) (d) (i)	http://www.ice.gov/news/library/factsheets/rapidrepat.htm http://codes.lp.findlaw.com/nycode/EXC/12-B/259-i https://www.parole.ny.gov/pdf/handbook6-09.pdf
North Carolina	N.C. Gen. Stat. § 148-64.1 (2012)	http://www.lawserver.com/law/state/north-carolina/nc-laws/north_carolina_laws_148-64-1
North Dakota	None	None known
Ohio	ORC Ann. 2967.17 (2012)	http://codes.ohio.gov/orc/2967.17
Oklahoma	57 Okl. St. § 332.7 (2012) Section I	webserver1.lsb.state.ok.us/OK_Statutes/CompleteTitles/os57.rtf
Oregon	None	None known
Pennsylvania	61 Pa.C.S. § 6143	http://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/61/00.061.043.000..HTM
Rhode Island	None, ICE Rapid REPAT officially rescinded	http://www.governor.ri.gov/documents/executiveorders/2011/Executive_Order_11-02.pdf Also see Appendix B
South Carolina	None	None known
South Dakota	None	None known
Tennessee	None	None known
Texas	Texas Government Code § 508.146(f)	http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.508.htm
Utah	None	None known
Vermont	None	No official state law or policy, but, once eligible for parole, noncitizens can request parole to ICE custody. See pgs. 22 and 27 of Vermont Parole Board Manual: http://www.doc.state.vt.us/about/parole-board/pb-manual
Virginia	None	None known
Washington	ICE Rapid REPAT	http://www.ice.gov/news/library/factsheets/rapidrepat.htm http://www.defensenet.org/immigration-project/immigration-resources/early-release-from-doc-custody-for-deportation/DOC%20Early%20Release%20Policy%206-24-11.pdf/view
West Virginia	None	None known
Wisconsin	None	None known
Wyoming	None	No official state law or policy, but criminal defense attorney may negotiate in plea agreement to allow for early release to ICE custody.

Appendix A

8 U.S.C. § 1231

(a) Detention, release, and removal of aliens ordered removed

(4) Aliens imprisoned, arrested, or on parole, supervised release, or probation

(A) In general

Except as provided in section 259 (a) ^[1] of title 42 and paragraph (2), ^[2] the Attorney General may not remove an alien who is sentenced to imprisonment until the alien is released from imprisonment. Parole, supervised release, probation, or possibility of arrest or further imprisonment is not a reason to defer removal.

(B) Exception for removal of nonviolent offenders prior to completion of sentence of imprisonment

The Attorney General is authorized to remove an alien in accordance with applicable procedures under this chapter before the alien has completed a sentence of imprisonment—

(i) in the case of an alien in the custody of the Attorney General, if the Attorney General determines that

(I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense related to smuggling or harboring of aliens or an offense described in section 1101 (a)(43)(B), (C), (E), (I), or (L) of this title ^[3] and

(II) the removal of the alien is appropriate and in the best interest of the United States; or

(ii) in the case of an alien in the custody of a State (or a political subdivision of a State), if the chief State official exercising authority with respect to the incarceration of the alien determines that

(I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense described in section 1101 (a)(43)(C) or (E) of this title),

(II) the removal is appropriate and in the best interest of the State, and

(III) submits a written request to the Attorney General that such alien be so removed.

Appendix B

File: ICE 2010

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS



Department of Corrections

Ashbel T. Wall, II, Director
40 Howard Avenue
Cranston, RI 02920

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February 9, 2011

Immigration and Customs Enforcement
Bruce E. Chadbourne, Field Office Director
c/o Greg Mercurio, Assistant Field Office Director
1 International Way
Warwick, RI 02886

RE: Rapid Repat program

Dear Mr. Chadbourne:

As you may recall, the Department of Corrections entered into a Memorandum of Understanding with the Department of Homeland Security to implement a "Rapid Repat" program (copy of MOU enclosed). This MOU was precipitated by an Executive Order of then Governor Carcieri, which directed the Department of Corrections to enter into the MOU to implement the Rapid Repat program. Newly elected Governor Chafee has recently issued an Executive Order which repeals Governor Carcieri's Executive Order, thus effectively terminating the directive for the MOU and Rapid Repat program. In light of that, pursuant to provision 9 of the MOU, I hereby give written notice that the Department of Corrections is terminating its participation in the MOU and Rapid Repat program.

Sincerely,

Ashbel T. Wall, II
Director

cc: Kenny Alston, Legal Counsel to Governor Chafee
Dr. Kenneth Walker, Chairperson, RI Parole Board