

## **A NATION CHALLENGED: The New Regulation**

The New York Times

November 28, 2001 Wednesday, Late Edition - Final

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**Section:** Section B; Column 1; National Desk; Pg. 7

**Length:** 451 words

### **Body**

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Following are the text of a **new regulation** on the detention of immigrants, issued by Attorney General John Ashcroft for the Immigration and Naturalization Service on Oct. 26, and excerpts from a Justice Department background paper on the **regulation**:

#### Attorney General's Order

In any case in which the district director has determined that an alien should not be released or has set a bond of \$10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon the service's filing of a Notice of Service Intent to Appeal Custody Redetermination (Form EOIR-43) with the immigration court within one business day of the issuance of the order, and shall remain in abeyance pending decision of the appeal by the Board of Immigration Appeals.

The stay shall lapse if the service fails to file a notice of appeal with the board in accordance with Section 3.38 within 10 business days of the issuance of the order of the immigration judge. If the board authorizes release (on bond or otherwise), that order shall be automatically stayed for five business days.

If, within that five-day period, the commissioner certifies the board's custody order to the attorney general pursuant to Section 3.1(h)(1) of this chapter, the board's order shall continue to be stayed pending the decision of the attorney general.

#### Justice Department Paper

The immediate implementation of this interim rule without prior public comment is necessary to prevent the release of aliens who may pose a threat to national security and to provide a clear set of procedural rules of administrative procedure with respect to determining the custody conditions and bond status for aliens during the pendency of removal proceedings.

The existing rules permit the service to appeal a decision ordering the release of an alien, but in many cases the rules do not provide for a stay of the release decision during the time that the service would be pursuing an appeal.

...

During this window of time, the service may be required to release an alien that it believes is a threat to national security or the public safety without even having the opportunity to present its case to the board. The automatic stay provision allows the service attorney to maintain the alien's custody status. . . .

The current investigation in connection with recent terrorist activities has resulted in the detention of a large number of individuals. This may overwhelm the capacity of the service to take the steps necessary to secure stays of custody redeterminations in timely fashion. The automatic stay provision will address this problem and prevent the service and the board from being overwhelmed with stay requests.

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## Classification

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**Language:** ENGLISH

**Document-Type:** Text

**Publication-Type:** Newspaper

**Subject:** IMMIGRATION (94%); ATTORNEYS GENERAL (93%); LAWYERS (91%); APPEALS (90%); CITIZENSHIP (90%); POLITICAL DETAINEES (90%); JUDGES (90%); IMMIGRATION LAW (90%); AGENCY RULEMAKING (90%); LAW ENFORCEMENT (89%); JUSTICE DEPARTMENTS (89%); IMMIGRANT DETENTION CENTERS (89%); ADMINISTRATIVE PROCEDURE (70%); NATIONAL SECURITY (68%); INVESTIGATIONS (60%); TERRORISM (50%)

**Organization:** BOARD OF IMMIGRATION APPEALS (56%); IMMIGRATION AND NATURALIZATION SERVICE; JUSTICE DEPARTMENT

**Industry:** LAWYERS (91%)

**Geographic:** NEW YORK CITY; WASHINGTON (DC)

**Load-Date:** November 28, 2001