



# Removals of Honorably Discharged Members of the U.S. Armed Services

*February 25, 2022*

Fiscal Year 2020 Report to Congress



**Homeland  
Security**

*U.S. Immigration and Customs Enforcement*

# Message from the Acting Director

February 25, 2022

I am pleased to present the following report, "Removals of Honorably Discharged Members of the U.S. Armed Services," for Calendar Year 2019, which was prepared by U.S. Immigration and Customs Enforcement (ICE).

This report was compiled pursuant to a requirement in House Report 116-180, which accompanies the Fiscal Year 2020 Department of Homeland Security Appropriations Act (P.L. 116-93).



Pursuant to congressional guidelines, this report is provided to the following Members of Congress:

The Honorable Lucille Roybal-Allard  
Chairwoman, House Appropriations Subcommittee on Homeland Security

The Honorable Chuck Fleischmann  
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable Chris Murphy  
Chair, Senate Appropriations Subcommittee on Homeland Security

The Honorable Shelley Moore Capito  
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

Inquiries related to this report may be directed to the ICE Office of Congressional Relations at (202) 732-4200.

Sincerely,

A stylized, handwritten signature in blue ink, appearing to read "Tae D. Johnson". The signature is fluid and extends to the right.

Tae D. Johnson  
Acting Director  
U.S. Immigration and Customs Enforcement



# Removals of Honorably Discharged Members of the U.S. Armed Services

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# I. Legislative Language

This report was compiled in response to the reporting requirements set forth in House Report 116-180, which accompanies the Fiscal Year 2020 Department of Homeland Security Appropriations Act (P.L. 116-93).

House Report 116-180 states:

*Reporting on Removals.* – The Department...shall also report semiannually on removals of honorably discharged members of the armed services.

This report covers data for Calendar Year 2019, from January 1, 2019, through December 31, 2019.<sup>1</sup>

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<sup>1</sup> ICE notes that there is no system of record capable to produce this report. This analysis is provided from a manual review of requisite data.

## II. Background

U.S. Immigration and Customs Enforcement (ICE) is committed to enforcing immigration laws humanely, effectively, with professionalism, and in accordance with government and Department-wide enforcement and removal priorities.<sup>2</sup> Since 2004, ICE officers have been instructed to inquire about military service when processing noncitizens for removal proceedings, and protections are in place to ensure that service in the U.S. Armed Forces is taken into consideration. To this end, any action taken by ICE that may result in the removal of a noncitizen with identified military service must be authorized by the ICE Enforcement and Removal Operations (ERO) Field Office Director (FOD) with the assistance of the ICE Office of the Principal Legal Advisor (OPLA).

ICE guidance on the issuance of Notices to Appear (NTA) for U.S. military veterans or service members includes a memorandum from then-Acting ERO Director Victor X. Cerda, *Issuance of Notices to Appear, Administrative Orders of Removal, or Reinstatement of a Final Removal Order on Aliens with United States Military Service* (Sept. 3, 2004), and a memorandum from then-Acting Homeland Security Investigations (HSI) Director Marcy M. Forman, *Issuance of Notices to Appear, Administrative Orders of Removal, or Reinstatement of a Final Removal Order on Aliens with United States Military Service* (June 21, 2004).<sup>3</sup> The memoranda call for the ICE NTA-issuing component to examine a noncitizen's immigration, military, criminal, and personal history, and to generate a memorandum from the respective field leader, either an FOD or a Special Agent in Charge (SAC), to the Alien-file (A-file) that sets forth the facts considered and authorization to issue the NTA. OPLA attorneys are responsible for verifying that the process was completed and that the memorandum is included in the noncitizen's A-file. This process, however, depends on the noncitizen affirmatively identifying for the ICE official his or her military association. There is no affirmative check with a Department of Defense system for potential military association.

On August 15, 2017, the ICE Principal Legal Advisor issued *Guidance to OPLA Attorneys Regarding the Implementation of the President's Executive Orders and the Secretary's Directives on Immigration Enforcement*, which expressly identified current or former service in the U.S. military as positive factors for consideration, along with other factors in the totality of the circumstances, when deciding whether to exercise prosecutorial discretion.

Additionally, ICE officers and agents must consult with OPLA to investigate the potential U.S. citizenship status or eligibility to naturalize of those who have served in the U.S. Armed Forces. See ICE Policy No. 16001.2, *Investigating the Potential U.S. Citizenship of Individuals Encountered by ICE* (Nov. 10, 2015). OPLA field locations are expected to elevate email alerts to Field Legal Operations in cases where a veteran or current service member of any branch of the United States Armed Forces is or may be placed into removal proceedings.

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<sup>2</sup> On September 30, 2021, Secretary Mayorkas issued a memorandum entitled *Guidelines for the Enforcement of Immigration Law*, providing guidance on priorities for the apprehension and removal of noncitizens. The Secretary's memorandum took effect on November 29, 2021.

<sup>3</sup> <https://www.ice.gov/doclib/foia/prosecutorial-discretion/aliens-us-military-service.pdf>

Most recently, on July 2, 2021, ICE Acting Director Johnson issued guidance to the ICE workforce reflecting ICE's commitment to support noncitizen service members, veterans, and immediate family members of service members, which included reviewing policies and practices to ensure that an individual's military service is identified proactively and is given due consideration in decision-making involving enforcement actions, so that prosecutorial discretion may be exercised appropriately in such cases.

### III. Summary

In Calendar Year 2019, ICE removed three criminal noncitizens who had been previous members of the Armed Forces, and who had been honorably discharged. A more detailed breakdown of the underlying criminal charges that resulted in a criminal conviction and a finding of removability for the three criminal noncitizens is provided below.

#### **ICE Removals for Identified Veterans from 01/01/2019 – 12/31/2019 by Criminal Charge**

<b>Most Serious Criminal Charge<sup>4</sup></b>	<b>Total</b>
<b>Total</b>	<b>3</b>
Burglary	1
General Crimes <sup>5</sup>	1
Weapons Offenses	1

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<sup>4</sup> ICE tracks and reports on criminality using the Federal Bureau of Investigation (FBI)'s standard National Crime Information Center (NCIC) codes.

<sup>5</sup> General crimes are defined by FBI NCIC to include the following criminal charges: crimes against persons; property crimes; morals-decency crimes; and public order crimes.

## Appendix: Abbreviations

<b>Abbreviation</b>	<b>Definition</b>
A-File	Alien File
ERO	Enforcement and Removal Operations
FBI	Federal Bureau of Investigation
FOD	Field Office Director
HSI	Homeland Security Investigations
ICE	U.S. Immigration and Customs Enforcement
NCIC	National Crime Information Center
NTA	Notice to Appear
OPLA	Office of the Principal Legal Advisor
SAC	Special Agent in Charge