



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

First Half, Calendar Year 2022

August 16, 2022

Fiscal Year 2022 Report to Congress



**Homeland
Security**

U.S. Immigration and Customs Enforcement

Message from the Acting Director

August 16, 2022

I am pleased to present the following report, “Removals of Honorably Discharged Members of the U.S. Armed Services,” for the first half of Calendar Year 2022, which has been prepared by U.S. Immigration and Customs Enforcement (ICE).

This report was compiled pursuant to a requirement in House Report 117-87, which accompanies the Fiscal Year 2022 Department of Homeland Security Appropriations Act (P.L. 117-103).



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 handwritten signature in blue ink, appearing to read 'Tac D. Johnson', written over a light blue horizontal line.

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



Removals of Honorably Discharged Members of the U.S. Armed Services First Half, Calendar Year 2022

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I. Legislative Language

This report was compiled in response to the reporting requirement set forth in House Report 117-87, which accompanies the Fiscal Year 2022 Department of Homeland Security Appropriations Act (P.L. 117-103).

House Report 117-87 states:

Removal and Detention Reporting.—The Department... shall also report semiannually on removals of members of the armed services who have either been discharged or separated from service other than for dishonorable or bad conduct.

This report covers data for Calendar Year (CY) 2022, from January 1, 2022, through June 30, 2022.¹

¹ U.S. Immigration and Customs Enforcement (ICE) notes that there is no system of record capable of producing this report. This analysis is provided from a manual review of requisite data.

II. Background

ICE is committed to enforcing immigration laws humanely, effectively, with professionalism, and in accordance with government and Department-wide enforcement and removal priorities.² Since 2004,³ 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 as outlined in ICE Directive 10039.2, *Consideration of U.S. Military Service When Making Discretionary Determinations with Regard to Enforcement Actions Against Noncitizens* (May 23, 2022). 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 Field Office Director (FOD) or Homeland Security Investigations Special Agent-in-Charge (SAC), with the assistance of the ICE Office of the Principal Legal Advisor (OPLA).

On May 23, 2022, ICE Acting Director Tae Johnson signed ICE Directive 10039.2, which provides updated guidance on the identification of noncitizens with U.S. military service; the collection of information relevant to their U.S. military service; evaluation of their eligibility for citizenship; and consideration of U.S. military service in the issuance of Notices to Appear (NTA), administrative final orders, reinstatements, and other civil immigration enforcement actions. ICE Directive 10039.2 updates previous ICE policy to ensure that ICE officers and agents affirmatively screen for, investigate, and appropriately document noncitizens' U.S. military service when encountered for civil immigration enforcement. When noncitizens claim U.S. military service, ICE Directive 10039.2 requires ICE to evaluate their eligibility for naturalization under section 328 or 329 of the Immigration and Nationality Act before placing them in removal proceedings.

ICE generally will not initiate removal proceedings against noncitizens who are eligible statutorily for naturalization as a result of their U.S. military service, absent significant aggravating factors being present in the case. ICE Directive 10039.2 also provides that ICE

² On September 30, 2021, Secretary Mayorkas issued a memorandum entitled, *Guidelines for the Enforcement of Immigration Law* (Mayorkas memorandum), providing guidance on priorities for the apprehension and removal of noncitizens. The Secretary's memorandum took effect on November 29, 2021. On June 10, 2022, the U.S. District Court for the Southern District of Texas issued a final judgment vacating the Mayorkas memorandum. *See Texas v. United States*, No. 6:21-00016 (S.D. Tex. June 10, 2022). As such, effective June 25, 2022, at 12:00 a.m. Central Daylight Time, ICE ceased implementation and reliance on the Mayorkas memorandum pursuant to the June 24, 2022, broadcast message from ICE Acting Director Tae Johnson entitled, *Status of Guidelines for the Enforcement of Civil Immigration Law*. In the absence of the Mayorkas memorandum, ICE personnel will continue to make enforcement decisions on a case-by-case basis focusing on the greatest threats to homeland security in a professional and responsible manner informed by their experience as law enforcement officers.

³ ICE Directive 10039.2, *Consideration of U.S. Military Service When Making Discretionary Determinations with Regard to Enforcement Actions Against Noncitizens*, supersedes the memorandum from Marcy M. Forman, Acting Director, ICE Office of Investigations, to all SACs, et al., *Issuances 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) (later published as ICE Policy No. 10039.1 in the ICE Policy Manual) and the memorandum from Victor Cerda, Acting Director, ICE Office of Detention and Removal Operations, to all FODs, *Issuance of Notices to Appear, Administrative Orders of Removal, or Reinstatement of a Final Removal Order on Aliens with United States Military Service* (September 3, 2004).

generally will not issue NTAs, administrative final orders, or reinstatements to a noncitizen serving on active duty in the U.S. military, absent significant aggravating factors being present in the case. Further, ICE Directive 10039.2 provides that ICE will consider a noncitizen's U.S. military service as a significant mitigating factor that must be considered when deciding whether to take civil immigration enforcement action against the noncitizen based on the totality of the circumstances. Finally, ICE Directive 10039.2 vests SACs and FODs with the final authority to decide whether to exercise prosecutorial discretion in favor of, or to take an enforcement action against, a noncitizen with a U.S. military service background.

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).⁴ 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 U.S. Armed Forces is or may be placed into removal proceedings. ICE values the contributions of noncitizens who have served in the U.S. military.

⁴ <https://www.ice.gov/sites/default/files/documents/Document/2017/16001.2.pdf>

III. Summary

In the first half of CY 2022, ICE removed five criminal noncitizens who previously had been members of the U.S. 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 five criminal noncitizens is provided below.

ICE Removals for Identified Veterans from 01/01/2022 – 06/30/2022 by Criminal Charge

Most Serious Criminal Charge⁵	Total
Total	5
Assault	1
Obstructing Judiciary, Congress, Legislature, etc.	1
Sexual Assault	2
Fraud	1

⁵ ICE tracks and reports on criminality using the Federal Bureau of Investigation’s standard National Crime Information Center codes.

Appendix: Abbreviations

Abbreviation	Definition
CY	Calendar Year
FOD	Field Office Director
ICE	U.S. Immigration and Customs Enforcement
Mayorkas Memorandum	Secretary's memorandum entitled <i>Guidelines for the Enforcement of Immigration Law</i>
NTA	Notice to Appear
OPLA	Office of the Principal Legal Advisor
SAC	Special Agent-in-Charge