



# Department of Defense INSTRUCTION

NUMBER 5525.09  
February 10, 2006

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GC, DoD

SUBJECT: Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders

- References:
- (a) DoD Directive 5525.9, "Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders," December 27, 1988 (hereby canceled)
  - (b) Acting Deputy Secretary of Defense Memorandum, "DoD Directives Review – Phase II," July 13, 2005
  - (c) Section 814 note of title 10, United States Code
  - (d) DoD Instruction 5525.11, "Criminal Jurisdiction over Civilians Employed by or Accompanying the Armed Forces Outside the United States and Former Service Members," March 3, 2005
  - (e) Chapter 212, Sections 3261-3267 of title 18, United States Code
  - (f) Section 814 of title 10, United States Code

## 1. PURPOSE

This Instruction:

- 1.1. Reissues reference (a) as a DoD Instruction according to the guidance in reference (b) and implements reference (c).
- 1.2. Establishes policy for the return to the United States of, or other action affecting, DoD members and employees serving outside the United States and family members accompanying them.
- 1.3. Provides guidance when the guidelines in reference (d) do not apply, for treating individuals who have been charged with, or convicted of, a felony in a court, have been held in contempt of a court for failure to obey the court's order, or have been ordered to show cause by a court why they should not be held in contempt for failing to obey the court's order.

1.4. Summarizes the guidance established in reference (d), according to chapter 212, Sections 3261-3267 of title 18, United States Code (reference (e)), for treating civilians employed by or accompanying the Armed Forces outside the United States, including contractors and subcontractors, certain former military members, when such persons are arrested for or charged with a felony offense under reference (e) and initial proceedings or other Federal Court or Federal Magistrate Judge orders may be, or have been issued with respect thereto.

## 2. APPLICABILITY

This Instruction applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the “DoD Components”). The term “Military Services,” as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

## 3. DEFINITIONS

The terms listed below are defined as applicable to this Instruction:

3.1. Certain Former Military Members. Those former military members who no longer remain subject to the Uniform Code of Military Justice.

3.2. Court. Any judicial body in the United States with jurisdiction to impose criminal sanctions on a DoD member, employee, or family member.

3.3. DoD Employee. A civilian employed by a DoD Component, including an individual paid from non-appropriated funds, who is a citizen or national of the United States, and any person “employed by the Armed Forces outside the United States,” as defined in section 3267 of reference (e).

3.4. DoD Member. An individual who is a member of the Armed Forces on active duty, including members of the reserves and National Guard called to active duty, and under the jurisdiction of the Secretary of a Military Department, regardless of whether the individual is assigned to duty outside that Military Department.

3.5. Felony. A criminal offense that is punishable by incarceration for more than 1 year, regardless of the sentence imposed for commission of the offense.

3.6. United States. The 50 States, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the Virgin Islands.

#### 4. POLICY

It is DoD policy that:

4.1. The Department of Defense shall cooperate with courts and State and local officials in enforcing court criminal orders relating to DoD members and employees stationed outside the United States, as well as their family members who accompany them, who have been charged with, or convicted of, a felony in a court, have been held in contempt by a court for failure to obey the court's order, or have been ordered to show cause why they should not be held in contempt for failing to obey the court's order. DoD mission requirements, the provisions of applicable international agreements, and ongoing DoD investigations and courts-martial shall be considered when determining the degree of cooperation required.

4.2. The policies and procedures of references (d) and (e) shall apply to civilians employed by or accompanying the Armed Forces outside the United States, including contractors and subcontractors at any tier, certain former military members, and any family members of any category of civilians or military members when they are arrested for or charged with a felony offense under reference (e), and a Federal Court or Federal Magistrate Judge has either issued an order, or otherwise might issue an order, requiring the individual to return to the United States.

4.3. This Instruction does not affect the authority of the DoD Components to cooperate with courts and State and local officials in enforcing orders against DoD members and employees outside the United States on matters not listed in paragraphs 4.1. and 4.2.

4.4. This Instruction is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any person, organization, or other entity against the United States, its departments, agencies, officers, employees, or agents, or any other person.

#### 5. RESPONSIBILITIES

5.1. The General Counsel of the Department of Defense (GC, DoD) shall:

5.1.1. Issue guidance to implement this Instruction.

5.1.2. Review and approve implementing documents issued by the DoD Components.

5.1.3. Coordinate requests for exception to the requirements of this Instruction under paragraph 5.2.

5.2. The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) shall grant exceptions on a case-by-case basis to the requirements of Enclosure 1, with the concurrence of the GC, DoD. In exercising this authority, the USD(P&R) shall give due consideration to the pertinent mission requirements, readiness, discipline, and ongoing DoD investigations and courts-martial, on request by the DoD Component concerned.


5.3. The Heads of the DoD Components shall:

5.3.1. Comply with this Instruction.

5.3.2. Report promptly any action taken under sections E1.1. or E1.2. to the USD(P&R) and GC, DoD.

## 6. EFFECTIVE DATE

This Instruction is effective immediately.



William J. Haynes II  
General Counsel of the  
Department of Defense

Enclosure - 1

E1. Guidance for Compliance of DoD Members, Employers, and Family Members Outside the United States With Court Orders

E1. ENCLOSURE 1

GUIDANCE FOR COMPLIANCE OF DoD MEMBERS, EMPLOYEES, AND FAMILY MEMBERS OUTSIDE THE UNITED STATES WITH COURT ORDERS

E1.1. REQUEST FOR ASSISTANCE

The Head of the DoD component concerned, or designee, shall determine whether the request from a court, or a Federal, State, or local official concerning a court order described in paragraph 4.1. is based on an order issued by a court of competent jurisdiction. Attempts shall be made to resolve the matter to the satisfaction of the court without the return of, or other action affecting, the member, employee, or family member (the "Subject"). Before action is taken under this section, the Subject of the court order shall be afforded the opportunity to provide evidence of legal efforts to resist the court order, or otherwise show legitimate cause for noncompliance. If the Head of the DoD Component concerned determines such efforts warrant a delay in taking action under this section, the Component Head may grant a brief delay (not more than 90 days). All delays promptly shall be reported to the USD(P&R) and the GC, DoD.

E1.1.1. If the request pertains to a felony or to contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or another person awarded custody by court order, and the matter cannot be resolved with the court without the return of the Subject to the United States, the Head of the DoD Component promptly shall take the action prescribed in sections E1.2. and E1.3., unless the USD(P&R), grants an exception.

E1.1.2. If the request does not pertain to a felony or contempt involving the unlawful or contemptuous removal of the child from the jurisdiction of a court or the custody of a parent or another person awarded custody by court order, and the matter cannot be resolved with the court without the return of the Subject to the United States, the Head of the Component promptly shall take the action prescribed in sections E1.2. through E1.5., when deemed appropriate under the facts and circumstance of each particular case, following consultation with legal staff.

E1.2. DoD MEMBER AS THE SUBJECT OF A REQUEST

If a DoD member is the Subject of the request, the member shall be ordered, under Section 814 of title 10, United States Code (reference (f)), to return expeditiously to an appropriate port of entry at Government expense, contingent on the party requesting return of the member providing for transportation, and escort, if desired, of the member from such port of entry to the jurisdiction of the party. The party requesting return of the member shall be notified at least 10 days before the member's return to the selected port of entry, absent unusual circumstances.

E1.3. DoD EMPLOYEE AS THE SUBJECT OF A REQUEST

If a DoD employee is the Subject of the request concerning the court order, the employee shall strongly be encouraged to comply with the court order. Failure to respond to the court order may be a basis for withdrawal of command sponsorship and adverse action against the DoD employee, including removal from the Federal Government. Proposals to take such adverse action must be approved by the Head of the DoD Component concerned. Such proposals shall be coordinated with the cognizant civilian personnel office and legal office.

E1.4. FAMILY MEMBER OF A DoD MEMBER OR EMPLOYEE AS THE SUBJECT OF A REQUEST

If the family member of a DoD member or employee is the Subject of a request concerning the court order, the family member shall strongly be encouraged to comply with the court order. Failure to respond to the court order may be a basis for withdrawing the command sponsorship of the family member.

E1.5. SUBJECT ASSISTANCE

The person who is the Subject of the court order shall, to the extent practicable, be provided the assistance requested when a request for assistance is received (according to reference (d)) concerning a Federal court or Federal Magistrate Judge's order as described in paragraph 4.2. The person's supervisor or the installation commander should encourage the person to comply with a valid order. Failure to respond to a valid order, without a legal justification for not doing so, may serve as the basis for adverse action, including removal from the Federal Government. Such actions should first be coordinated with the cognizant civilian personnel office and legal office.

E1.6. APPLICABILITY OF THIS ENCLOSURE

The provisions of this enclosure regarding the granting delays or exceptions to compliance with court orders do not apply to Federal court orders or Federal Magistrate Judge orders issued according to reference (e).