



## DoD INSTRUCTION 5525.09

# COMPLIANCE WITH COURT ORDERS BY SERVICE MEMBERS AND DoD CIVILIAN EMPLOYEES, AND THEIR FAMILY MEMBERS OUTSIDE THE UNITED STATES

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**Originating Component:** Office of the General Counsel of the Department of Defense

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**Approved by:** Paul C. Ney, Jr., General Counsel of the Department of Defense

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**Purpose:** In accordance with DoD Directive 5145.01, this issuance:

- Establishes policy and assigns responsibility for compliance with civilian court orders by Service members and DoD civilian employees serving outside the United States, and their family members accompanying them.
- Provides guidance for compliance with civilian court orders directed to Service members and DoD civilian employees outside the United States, and their family members accompanying them.

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## **SECTION 1: GENERAL ISSUANCE INFORMATION**

**1.1. APPLICABILITY.** This issuance applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

### **1.2. POLICY.**

a. DoD will cooperate with courts and State and local officials in enforcing court orders relating to Service members and DoD civilian employees stationed outside the United States, and their family members who accompany them, who have been:

- (1) Charged with, or convicted of, a felony in a court;
- (2) Held in contempt by a court for failure to obey a court order; or
- (3) Ordered to show cause why they should not be held in contempt for failing to obey a court order.

b. DoD mission requirements, the provisions of applicable international agreements, and ongoing DoD investigations and courts-martial will be considered when determining the degree of cooperation required.

c. The policies and procedures of Chapter 212 of Title 18, United States Code (the Military Extraterritorial Jurisdiction Act (MEJA)), and DoD Instruction 5525.11 will apply to individuals employed by the DoD, as well as those performing functions in support of or accompanying the Military Services outside the United States, including:

- (1) DoD civilian personnel employed by the DoD.
- (2) Contractors and subcontractors at any tier.
- (3) Former Service members triable under MEJA.
- (4) Any family members of Service members or DoD civilians employed by or accompanying the Military Services outside the United States when:
  - (a) They are arrested for or charged with a felony offense under MEJA; and
  - (b) A federal court order requires the individual to return to the United States or the relevant United States Attorney's Office expects a federal court to issue an order requiring the individual to return to the United States.

- d. This issuance does not affect the authority of the DoD Components to cooperate with courts and State and local officials in enforcing orders against Service members and DoD civilian employees outside the United States.
- e. This issuance neither intends to create nor creates any right or benefit, substantive or procedural, enforceable at law or in equity by any person, organization, or other entity against the United States or its departments, agencies, officers, employees, or agents, or any other person.

## **SECTION 2: RESPONSIBILITIES**

**2.1. GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE (GC DOD).** The GC DoD:

- a. Develops and distributes guidance, as necessary, to implement this issuance.
- b. Reviews and approves implementing documents issued by the DoD Components.
- c. Coordinates requests for exceptions to the requirements of this issuance.

**2.2. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R)).** The USD(P&R) grants exceptions on a case-by-case basis to the requirements of this issuance with the concurrence of the GC DoD. In exercising this authority, the USD(P&R), upon request by the DoD Component head concerned, considers pertinent mission requirements, readiness, discipline, and ongoing DoD investigations and courts-martial.

**2.3. DOD COMPONENT HEADS.** DoD Component heads will promptly report any action taken under this issuance to the USD(P&R) and GC DoD.

## SECTION 3: GUIDANCE FOR COMPLIANCE WITH COURT ORDERS

### 3.1. REQUEST FOR ASSISTANCE.

- a. The DoD Component head concerned will determine whether a request from a court or a federal, State, or local official concerning a court order described in Paragraph 1.2.a. is based on an order issued by a court of competent jurisdiction.
  - (1) The DoD Component's legal staff will attempt to resolve the matter to the satisfaction of the court without the return from outside the United States of, or other action affecting, the Service member, DoD civilian employee, or family member (hereafter, collectively referred to as the "Subject").
  - (2) Before action is taken pursuant to this section, the Subject of the court order will be given the opportunity to provide evidence of legal efforts to resist the court order, or otherwise show legitimate cause for noncompliance.
  - (3) If the DoD Component head concerned determines a delay in taking action pursuant to this section is warranted, the DoD Component head may grant a delay of not more than 90 days. The DoD Component head concerned will promptly report to the USD(P&R) and the GC DoD all grants of delay.
  - (4) Neither delays nor exceptions to compliance will be granted in connection with federal court orders issued in cases of charges brought under MEJA.
- b. The DoD Component head will promptly take the action prescribed by Paragraphs 3.2. through 3.4. if the request:
  - (1) 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:
    - (a) The matter cannot be resolved with the court without the return of the Subject to the United States; and
    - (b) The USD(P&R) has not granted an exception.
  - (2) 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:
    - (a) The matter cannot be resolved with the court without the return of the Subject to the United States; and
    - (b) Prompt action as provided by Paragraph 3.2. through 3.4. has been deemed appropriate under the facts and circumstance of each particular case, following consultation with the DoD Component's legal staff.

**3.2. SERVICE MEMBER AS THE SUBJECT OF A REQUEST.** If a Service member is the Subject of the request:

- a. The Service member will be ordered to return expeditiously to an appropriate United States port of entry at government expense, contingent on:
  - (1) The party requesting return of the Service member providing for transportation of the Service member from such port of entry to the jurisdiction of the party; and
  - (2) The DoD Component head deems it appropriate for the Service member to be accompanied by an escort, providing for transportation of that escort.
- b. The party requesting return of the Service member will be notified, absent unusual circumstances, at least 10 days before the Service member's return to the selected port of entry.

**3.3. DOD CIVILIAN EMPLOYEE AS THE SUBJECT OF A REQUEST.** If a DoD civilian employee is the Subject of the request concerning the court order, the employee will 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 civilian employee, including removal from Federal Government service. Proposals to take such adverse action must be approved by the DoD Component head concerned and coordinated with the cognizant civilian personnel and legal offices.

**3.4. FAMILY MEMBER OF A SERVICE MEMBER OR DOD CIVILIAN EMPLOYEE AS THE SUBJECT OF A REQUEST.** If a family member of a Service member or DoD civilian employee is the Subject of a request concerning the court order, the family member will 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.

## **GLOSSARY**

### **G.1. ACRONYMS.**

GC DoD	General Counsel of the Department of Defense
MEJA	Military Extraterritorial Jurisdiction Act
USD(P&R)	Under Secretary of Defense for Personnel and Readiness

### **G.2. DEFINITIONS.**

**court.** Any judicial body in the United States with jurisdiction to impose criminal sanctions on a Service member, DoD civilian employee, or family member.

**court of competent jurisdiction.** A court that has the power and authority to do a particular act.

**DoD civilian 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 defined as “employed by the Armed Forces outside the United States,” in accordance with Section 3267 of Title 18, United States Code.

**federal court order.** An order issued by the United States Supreme Court, a United States Court of Appeals, a United States District Court (including orders issued by United States Magistrate Judges), or another federal court of competent jurisdiction.

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

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

## **REFERENCES**

- DoD Directive 5145.01, “General Counsel of the Department of Defense (GC DoD),” December 2, 2013, as amended
- DoD Instruction 5525.11, “Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members,” March 3, 2005
- United States Code, Title 18, Chapter 212 (also known as “The Military Extraterritorial Jurisdiction Act (MEJA)”)