

U.S. Immigration and Customs Enforcement ENFORCEMENT AND REMOVAL OPERATIONS

ERO Training



CASE DISPOSITION (1000001897)

Lesson Plan Basic Immigration Enforcement Training Program

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LESSON DESCRIPTION

I. Lesson Title

Case Disposition

II. Program/Course Title

Basic Immigration Enforcement Training Program

III. Description

This lesson covers the various types of removal – removal proceedings under INA § 240, including voluntary departure and alternate orders of removal; reinstatement of a removal order under § 241(a)(5); administrative removal under § 238(b); expedited removal under INA § 235(b); other removals under the Visa Waiver Program, stowaways, crewmembers, S-nonimmigrant visas, distressed aliens, and aliens who are a threat to national security. The lesson is divided into four segments that can be delivered separately (but sequentially).

IV. Terminal Performance Objective (TPO)

Given an alien who is subject to removal, determine the process, procedures, forms, and form content so that the proper documentation is used for the required type of removal.

V. Enabling Performance Objectives (EPOs)

Segment 1

EPO 1: Outline the overall sequence of removal proceedings under § 240.

EPO 2: Determine the forms, content, and process for a removal under § 240 in accordance with the statutory requirements.

EPO 3: Recognize which aliens are ineligible for voluntary departure and identify the consequences and actions associated with an alien failing to comply with the provisions of a Voluntary Departure order and the forms associated with a Voluntary Departure order.

EPO 4: Distinguish between those aliens who are and are not entitled to a removal hearing.



Segment 2

EPO 5: Determine the forms, content, and process for reinstatement of a prior order of removal under § 241(a)(5) in accordance with statutory requirements.

Segment 3

EPO 6: Determine the forms, content, and process for an administrative removal under § 238(b) in accordance with the statutory requirements.

Segment 4

EPO 7: Determine the forms, content, and process for an expedited removal under § 235(b) in accordance with the statutory requirements.

EPO 8: Identify the removal procedures for administrative removal of: aliens entering under VWP, in accordance with § 217; crewmembers and stowaways; S-nonimmigrant visa holders; and distressed aliens under § 250; and aliens inadmissible on national security grounds under § 235(c).

VI. Length of Lesson

For All Segments

BIETP

EXPLANATION / DEMONSTRATION	PRACTICE	ASSESSMENT	TOTAL
7 hours	1 hour	Case Disposition Exam, Encounter to Detention PE	8 hours



LESSON ADMINISTRATION

I. Lesson Title

Case Disposition

II. Risk Management

None

III. Facility Requirements

None

IV. Transportation Requirements

None

V. Required Staff

One ERO Academy qualified Instructor

VI. Academy-Provided Training Aids and Equipment

Case Disposition PowerPoint

VII. Student-Provided Equipment

For each segment, students should bring Student Guide, notes, and handouts from previous segments.

VIII. Student Handouts and Materials

- Case Disposition Student Guide

Note: Because students may use the forms packet as a go-by for the process to be followed, some forms are duplicated between segments.

- Handouts Segment 1: § 240 Removal Process
 - Flowchart illustrating § 240 process
 - When a Removal Order Becomes Administratively Final
 - I-213 Record of Deportable/Inadmissible Alien
 - I-862 Notice to Appear
 - I-826 Notice of Rights and Request for Disposition
 - I-200 Warrant of Arrest of Alien
 - I-265 Notice to Appear/Bond and Custody Processing Worksheet
 - I-286 Notice of Custody Determination
 - I-205 Warrant of Removal/Deportation Sample



- I-205 Sample Completed for Fara
 - I-294 Warning to Alien Ordered Removed or Deported
 - I-210 Voluntary Departure and Verification of Departure
- Handouts Segment 2: Reinstatement under § 241(a)(5)
 - Flowchart illustrating Reinstatement Process
 - I-215B Record of Sworn Statement in Affidavit Form
 - I-214 Warning as to Rights – Interview Log
 - I-877 Record of Sworn Statement in Administrative Proceedings]
 - I-871 Notice of Intent/Decision to Reinstate Prior Order
 - I-213 Record of Deportable/Inadmissible Alien
 - Previously executed I-205 Warrant of Removal/Deportation
 - Previously executed I-294 Warning to Alien Ordered Removed or Deported [or I-296 Notice to Alien Ordered Removed/Departure Verification]
 - I-205 Warrant of Removal/Deportation
 - I-294 Warning to Alien Ordered Removed or Deported
 - Index of Record of Proceedings for Reinstatement
 - ROP Certification
 - EAGLE Screen Shots on Reinstatement
- Handouts Segment 3: Administrative Removal under § 238(b)
 - I-200 Warrant of Arrest
 - I-213 Record of Deportable/Inadmissible Alien
 - Certified Conviction Documents
 - I-265 Notice to Appear/Bond and Custody Processing Worksheet
 - I-215B Record of Sworn Statement in Affidavit Form
 - I-877 Record of Sworn Statement in Administrative Proceedings
 - Index of Record of Proceedings for Administrative Removal
 - ROP Certification
 - I-851 Notice of Intent (NOI) to Issue a Final Administrative Removal Order
 - I-851A Final Administrative Removal Order
 - I-205 Warrant of Removal
 - I-294 Warning to Alien Removed or Deported
- Handouts Segment 4: Other Removals
 - I-867A Record of Sworn Statement Proceedings under Section 235(b)(1)
 - I-867B Jurat for Record of Sworn Statement in Proceeding Under Section 235(b)(1)
 - I-860 Notice and Order of Expedited Removal
 - I-296 Notice to Alien Ordered Removed/Departure Verification
 - 71-058 Notice of Intent to Issue a Final Administrative Removal Order
 - 71-059 Record of Proceeding Visa Waiver Removal – Checklist
 - 71-057 Certification of Authenticity of the Records of Proceedings
 - 71-060 VWP Final Administrative Removal Order
 - 71-061 VWP Notice to Alien Ordered Removed/Departure Verification
 - I-589, Application for Asylum and for Withholding of Removal
[sample of form and overview]



IX. References

- ICE Policy Number 11009.1 – Strategic Use of Expedited Removal Authority
- Memorandum: Record of Proceedings in Reinstatement and Administrative Removal Cases (April 27, 2006)
- DOPPM Chapter 14: Removal Process: Non-Hearing Removal Cases
- DOPPM Appendix 14-1: Administrative Removal Proceedings Manual (M-430)
- 11059.1 Verifying Removability Prior to Removal
- Guidance on ICE Implementation of Policy and Practice Changes Recommended by the Department of Justice Inspector General, Mar. 30, 2004
- Record of Proceedings in Reinstatement and Administrative Removal Cases, April 27, 2006
- Expedited Removal Guidance, Sept. 14, 2004
- Immigration Enforcement Actions: 2010. Annual Report, June 2011
- Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens, Mar. 2, 2011
- Policy 11070.1 Visa Waiver Program Removals
- Guidance Relating to INA § 235(c): Removal of Aliens on Security and Related Grounds, May 14, 2007
- Case Disposition: Voluntary Departure lesson plan



Lesson Plan

Case Disposition

Segment 1: § 240 Removals

INTRODUCTION

I. Motivation

The statutes provide ICE with various legal tools to remove aliens who have entered the United States illegally, who are here legally but have violated the conditions of their status, or who present a danger to the safety of our communities. These tools are the forms and procedures that can be applied to the specific facts of an alien's case.

You may be completing the forms yourself or reviewing a detainee's file to verify that it includes all the required documentation, properly completed and signed. This must be done before the detainee can be moved to the next step in the removal process.

Processing a case incorrectly has consequences: Transporting an alien with an incomplete file could mean that the receiving office will refuse to accept custody. Processing a removal incorrectly can create delays and open the agency to a legal challenge of the removal – and open the officer to liability.

II. Objectives

A. Terminal Performance Objective (TPO)

Given an alien who is subject to removal, determine the process, procedures, forms, and form content so that the proper documentation is completed for the required type of removal.

B. Enabling Performance Objectives (EPOs)

EPO 1: Outline the overall sequence of removal proceedings under § 240.

EPO 2: Determine the forms, content, and process for a removal under § 240 in accordance with the statutory requirements.

EPO 3: Recognize which aliens are ineligible for voluntary departure and identify the consequences and actions associated with an alien failing to comply with the provisions of a Voluntary Departure order and the forms associated with a Voluntary Departure order.

EPO 4: Distinguish between those aliens who are and are not entitled to a removal hearing.

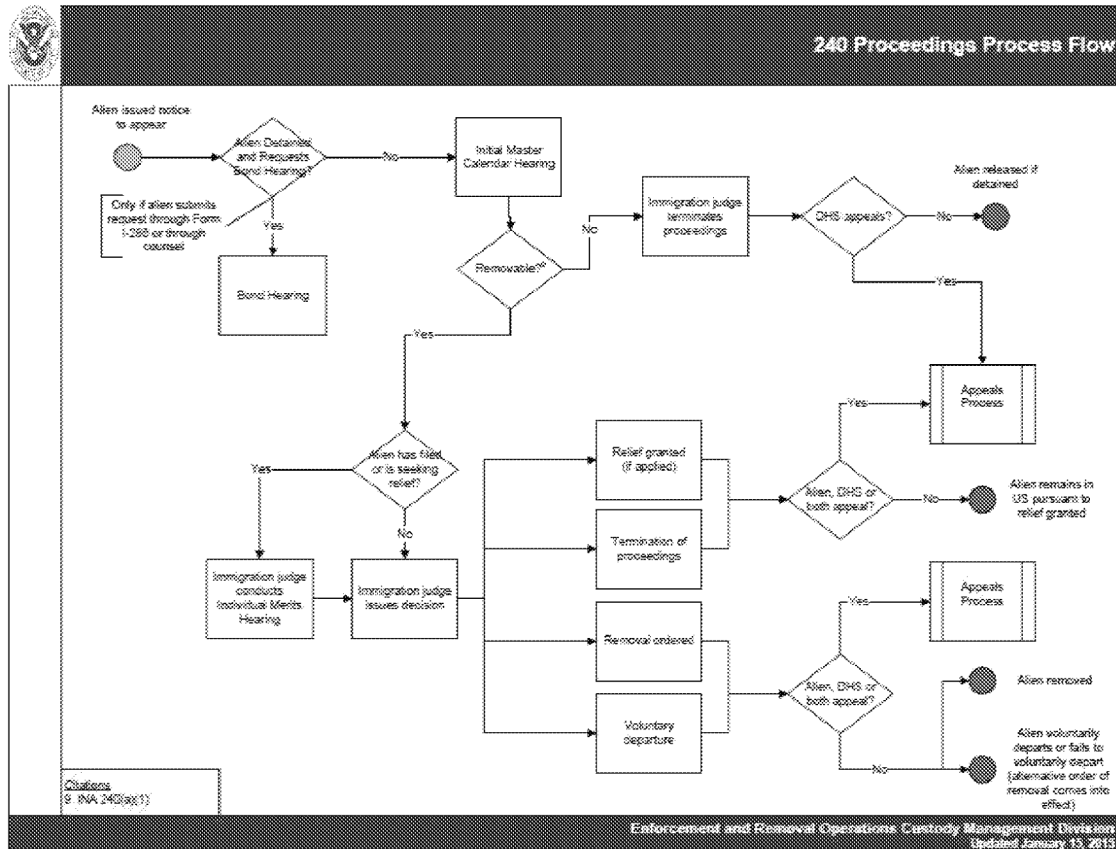


III. Review of the Past

Discuss the following questions with the students:

- What is a lawful permanent resident?
- Where is the individual's alienage and removability documented?

IV. Main Idea



This flowchart (which appears full-page size in the Student Guide) tracks the process of a removal under § 240 of the INA.

V. Agenda

This lesson is divided into four segments.

- Segment 1:
 - High-level overview of the removal process
 - Forms, content, and process for removals under § 240
 - Aliens not eligible for voluntary departure, consequences of failure to comply with voluntary departure order



- Which aliens are entitled to a removal hearing
- Segment 2: Forms, content, and process for reinstating a prior removal order in accordance with § 241(a)(5)
- Segment 3: Forms, content, and process for administrative removals under § 238(b)
- Segment 4: Procedures for other types of removal, including expedited removals under § 235(b) and removals under the Visa Waiver Program, § 217; removal of crewmembers and stowaways, S-nonimmigrant visa holders, aliens falling into distress, and inadmissible aliens who are a threat to national security.

For each segment you will answer questions on the appropriate forms, content, and process for various scenarios.

VI. Handouts

The forms referred to in this lesson are included in the Student Guide. In addition, you will receive a separate packet of the same forms to make it simpler to refer to the forms during the lecture and while working through the questions.



Segment 1: § 240 Removals

INSTRUCTION

I. Explanation

A. EPO 1: Outline the overall sequence of removal proceedings under § 240.

Instructor Note: *Remind students they are responsible for all material provided in their Student Guide. This includes the forms.*

Refer to flowchart illustrating the § 240 process (which appears full size in the Student Guide).

1. Removal proceedings under INA § 240 are conducted with the Immigration Court (Executive Office for Immigration Review, EOIR), which is an office of the United States Department of Justice
2. Alien is served with Notice to Appear (NTA), Form I-862, to appear before an immigration judge (IJ). Alien may be detained during removal proceedings.
 - a. Removal proceedings are commenced by the filing of an NTA with the Immigration Court (EOIR). (*This information is covered in PowerPoint slide discussing I-862*)
3. Proceedings before IJ, who determines if alien is amenable to removal based on charges on NTA – inadmissible under INA § 212; deportable under INA § 237
 - a. Proceedings can include master hearing(s) and/or merits hearing(s)
 - b. Alien may apply for relief from removal

Instructor Note: Asylum is covered in the Special Status and Forms of Relief lesson.

- c. If an alien is detained, the alien may seek a bond hearing – separate from removal proceedings
4. Master calendar hearing is a brief initial hearing where the IJ generally explains to the alien the nature of the proceedings, the charges against the alien, their rights (including their right to counsel at no cost to the U.S. government), takes pleadings (addressing the allegations and the charge(s) of removability), and identifies any relief from removal claims being made by the alien.



Instructor & Student Note: The IJ may issue an order of removal during a master calendar hearing, but not if the alien is seeking relief or is contesting the government's case.

5. During a merits hearing, the IJ considers all evidence, including documentary and testimonial evidence, on any contested issues involving removability and/or relief from removal.
 - a. Hearing on the alien's removal is conducted in an EOIR courtroom (which could be located in a detention facility) or via video teleconference (often done for aliens incarcerated in a state or federal facility)
6. Alien may be represented by counsel. Legal representation is not provided by the government.
 - a. The alien receives a list of Free Legal Service Providers when he is initially charged, but this does not guarantee availability of free legal counsel.
 - b. Interpreter services for the hearing are provided, as needed, at government expense. Documents provided by the alien in his case must be in English and translated at the alien's expense.
7. Government attorneys present the government's case for removal, based on information from the I-213, the alien's file, including charging documents, alien's sworn statement (or unsworn declarations), conviction records, and other evidence.
8. Burden of proof is based on the charges:
 - a. If the alien is charged under § 212 with being inadmissible, the alien must prove admissibility.
 - b. If the alien is charged under § 237 with being deportable, the government must prove deportability.

Instructor Note: Explain that most immigration hearings are not conducted with the same degree of formality that is typical of criminal proceedings. IJs may coach the alien through the process and ensure that charges and options are fully understood.

9. The IJ may grant a continuance, as appropriate to the situation.
10. If the alien does not appear for his scheduled hearing, the IJ can issue an order of removal in absentia.



- a. If alien has a final order of removal in absentia, and a motion to reopen is filed with the immigration court an automatic stay of removal may be in effect
- b. An automatic stay means the alien may not be removed by ICE until the IJ renders a decision on the motion to reopen.
- c. As there are different interpretations or policies in the field and decisions regarding motions to reopen, check with your local OPLA Chief Counsel Office for legal guidance regarding automatic stays for your specific jurisdiction.

B. EPO 2: Determine the forms, content, and process for removal under § 240 in accordance with the statutory requirements.

- 1. Removal under INA § 240 applies to the following types of aliens:
 - a. Alien is alleged to be inadmissible under § 212 or deportable under § 237 of the INA and does not fall into the category of aliens not entitled to a hearing.
 - b. Alien has been denied voluntary departure or return or is not eligible for voluntary departure.
 - c. Alien who has been granted asylee or refugee status and may be subject to removal
 - d. Alien has lawful permanent resident status; LPRs may only be removed through § 240 process.
- 2. Examples of aliens who may be placed in § 240 proceedings:
 - a. LPR who is convicted of a crime of violence, as defined in 101(a)(43)(F)
 - b. Alien present without admission who has been in the United States four months, has been arrested, but has no criminal convictions
 - c. A nonimmigrant who is in violation of his status
- 3. Record of Deportable/Inadmissible Alien, I-213
 - a. Document information from interview with subject and database checks on I-213.
 - 1) Biographical details and records checks are documented on form used to establish grounds for removal charge.



- 2) Narrative should include:
 - a) Method of encounter/location
 - b) Alienage and deportability/inadmissibility
 - c) Criminal history
 - d) Immigration status and pending petitions
 - e) Military service
 - f) Health and humanitarian aspects
 - g) Funds in subject's possession
- 3) Alien has been advised of communication privileges with their consulate or embassy
- 4) Officer's signature and disposition
- 5) Supervisor's signature
4. Notice of Rights and Request for Disposition, I-826, informs the alien of his right to a hearing before Immigration Court or the option of returning to his country without a hearing.
 - a. Also allows alien to state that he believes he faces harm if repatriated. [The term "repatriation" means to send (someone) back to their own country.]
 - b. Should be signed by alien with one option initialed.
 - c. Requires a certification of service signed by immigration officer and interpreter
5. File Warrant of Arrest of Alien (I-200).
 - a. Requires issuing officer to indicate the basis for determination that there is probable cause that alien is removable
 - b. Administrative warrant issued when a subject is taken into custody prior to the alien being issued a removal order
 - c. Signed by SDDO or higher
 - d. Certificate of service signed by serving officer and noting the language used to read warrant to alien
 - 1) Include name or number of interpreter, if one was used
6. Notice of Custody Determination, Form I-286:
 - a. Informs the subject whether he is to be:
 - 1) Detained in ICE custody



- 2) Released on bond
- 3) Released on personal recognizance
- 4) Released under other conditions

Instructor Note: Example of a release “under other conditions.” Alien released on either OREC or bond may have an additional requirement to adhere to the Alternatives to Detention Program.

- b. Minimum amount for a custody (delivery) bond is \$1,500 –INA 236(a)(2)(A)
- c. Alien should check appropriate box on whether he wants to request an immigration judge review of this custody determination

Instructor Note: For example, on I-286 SDDO grants \$10,000 bond. Alien requests a review of this custody determination by the IJ. Upon initial hearing, IJ determines a lower bond amount of \$5,000.

- d. Form must be signed by subject and by supervisor (SDDO, or higher), and served by the officer
- e. Must be served **within 48 hours** of subject being taken into ICE custody. Date and time of service is noted on form.

Instructor Note: Note that one practice is to print the alien’s fingerprint on the I-862 to help verify the identity of the person on whom the NTA was served.

7. Notice to Appear (NTA), I-862
 - a. I-862 includes:
 - 1) Alien’s name, address, phone number, and A-File number
 - 2) A description of the allegations against the alien and the provision of law under which the alien is charged
 - a) Selection is to be made about the alien:
 - (1) You are an arriving alien
 - (2) You are an alien present in the United States who has not been admitted or paroled, or



- (3) You have been admitted to the United States, but are removable for the reasons stated below.
 - b) Two allegations establish alienage (not a USC; national and citizen of _____).
 - c) Method of entry or admission
 - d) Specific INA 212 or 237 charge(s)
 - 3) Date, time, and location of the removal hearing
 - 4) Notice to the alien of a right to representation at the alien's expense
 - 5) Notice that if the alien fails to attend the hearing, his removal will be ordered. This is order in absentia.
 - 6) Notice that the alien must notify the immigration court of any changes to their address or telephone number within five working days of a change using a form EOIR-33. If alien is not held in detention, notices regarding hearings and requests for interview with ICE are sent by mail.
[Pertains only to non-detained aliens]
 - 7) Signed by serving officer showing the manner and language in which the Notice was served. Also signed by alien
- c. I-862 must be issued by SDDO or above (Issuing Officer).
- 8. Provide alien with List of Free Legal Service Providers, located at the EOIR website [www.justice.gov/eoir/free-legal-services-providers], along with the I-862.
- 9. Certain documents must be filed promptly after taking custody of alien.
 - a. NTA (I-862) must be served **on the alien within 48 hours** of the alien coming into ICE custody
 - b. Notice of Custody Determination (I-286) must be served **within 48 hours** of subject being taken into ICE custody
 - c. For aliens detained in ICE custody, the agency will submit the NTA to EOIR within 5 working days of the NTA being served on the alien, or upon the alien entering ICE custody, whichever is later.



Instructor Note: Per memo 1/11/2005 ICE Transportation, Detention and Processing Requirements, "The arresting office is responsible to ensure all aliens in ICE custody are served with appropriate processing papers that will facilitate the most expedient removal process (i.e. stipulated removal, reinstatement, administrative, expedited, notice to appear) as soon as possible after being taken into custody, but no longer than forty-eight (48) hours in the absence of exceptional circumstances."

Policy 11022.1 Section 5.1 Detainee Transfers states 5 days to serve NTA on EOIR.

Student Note: All documents, including I-862 and I-286, should be served when initially processing the alien as soon as the alien comes into ICE custody. It should not be a matter of practice to delay service until the deadline for each form unless ERO management determines the circumstances in the case warrant.

10. Removal proceedings are initiated when an NTA, I-862, is filed with the immigration court (EOIR)
 - a. Once the NTA is served on the EOIR, the master calendar initial hearing cannot take place sooner than 10 days from the service date unless the alien requests an expedited hearing and signs the appropriate field on the NTA.
11. Notice to Appear/Bond and Custody Processing Worksheet, I-265
 - a. Presents factors that allow immigration official to set bond
 - 1) Form does not grant bond – only the factors that were taken into consideration when bond was set
 - b. Details the allegations as listed from the NTA – primarily used to determine legal sufficiency to support charges
 - c. Describes specific situations that argue for or against release, such as:
 - 1) Whether an application for relief is pending
 - 2) Any prior record of bonding or breach of bond
 - 3) Health factors, time in United States, personal property, family in United States
 - d. Recommendation by officer either for voluntary departure or for issuing a Notice to Appear
 - e. Signed by ICE counsel approving legal sufficiency of charges listed on NTA
 - f. Must be signed by supervisor – SDDO or higher



Instructor Note: I-265 is never served on the alien but is housed in the A-file for internal documentation. The Risk Classification Assessment (RCA) provides recommendations on bond and custody determination. RCA is discussed during the EADM lesson.

I-265 can be confusing for students. This form does not grant bond – that document is the I-286. This form is not the charging document – that document is the I-862. I-265 summarizes the information on the other forms.

12. Typically, the I-862, I-826, and I-286 are all served at the same time.
 - a. All must be complete, including any conviction records if required for case

Instructor Note: Tip to remember – In processing cases for § 240 removal, use this collection of forms: I-286, I-862, and I-826. This particular combination of forms is never used for non-hearing removal cases.

Note that the order in which the forms/processing is done varies based on factors such as availability of information and circumstances of the case. In many cases they are prepared essentially simultaneously.

13. If OPLA attorney presenting removal case determines inadmissibility or deportability charges need amending, the OPLA attorney files an Additional Charges of Inadmissibility/Deportability form (I-261) with the EOIR to supplement the charges on the NTA.
14. Processing for a **stipulated removal** under § 240 – see § 240(d) and 8 CFR 13.25(b) – Alien concedes removability and waives a hearing. Under certain conditions aliens who are entitled to INA 240 Removal Proceedings may make a “Stipulated Request for Order, Waiver of Hearing” per 8 CFR 1003.25(b)

Instructor Note: Explain that not all IJs or immigration courts may allow stipulated removals. IJ may want to ensure that alien who is entitled to hearing has it.

- a. File Notice to Appear (I-862)
- b. Provide List of Free Legal Service Providers.
- c. Alien must agree to these provisions:
 - 1) Admit that the factual allegations in the Notice to Appear are true and correct.
 - 2) Concede that he is deportable or inadmissible as charged.
 - 3) Make no application for relief (no claim of asylum or any other benefit).



- 4) Designate a country for removal
 - 5) Acknowledge in writing that he understands the consequences of a request for a stipulated removal and enters the request voluntarily, knowingly, and without any duress from the government.
 - 6) Sign a statement that he will accept a written order of removal as final disposition and waive any appeal of that order.
 - d. These are incorporated in a request for stipulation (using a local form).
 - 1) I-862 and request for stipulated removal is filed with EOIR
 - e. File Warrant of Arrest of Alien, I-200
 - f. Serve Notice of Custody Determination (I-286) on subject.
 - 1) "Detained in custody" box must be checked.
 - 2) "I do not request a redetermination..." box must be checked.
 - g. Notice of Rights and Request for Disposition (I-826), must be signed with "I admit" box checked.
 - h. OCC must review and agree to filing the stipulated request for removal. After filing with the EOIR the IJ must accept and agree to stipulation.
 - i. IJ then issues final order of removal.
 - j. Warrant of Removal/Deportation (I-205) is signed by FOD or designee
 - k. Not all IJs will issue stipulated orders of removal. Consult with your OCC about the policy on filing requests for stipulated removal orders in your field office.
15. Hearing outcomes: After hearing the presentation of both the alien's and the government's case, the IJ issues an order that can have one of these outcomes:
 - a. Proceedings are terminated
 - b. Alien is found removable and is ordered removed.



- c. Alien is found to be subject to removal and is granted voluntary departure (VD) by the IJ with an alternate order of removal should the alien not abide by the VD grant.
 - d. Case may be administratively closed. A case may be administratively closed because of a pending USCIS application, a technical error, prosecutorial discretion exercised by the court, if an alien is in the custody of another law enforcement agency, etc. The onus is on ICE to re-calendar the case should the administratively closed case need to be reopened.
 - e. Alien is found removable and is granted other discretionary relief, such as:
 - 1) A grant of Withholding of Removal or Deferral of Removal under the Convention Against Torture (DCAT) – means the alien has proven a well-founded fear of persecution or torture if removed to a specific country
 - 2) Asylum – If alien is claiming fear, this will be handled by the IJ, who shall have exclusive jurisdiction over asylum applications filed by an alien who has been served a Notice to Appear (I-862), after the charging document has been filed with the Immigration Court – 8 CFR 208.2(b)
 - 3) Cancellation of Removal
16. The IJ's decision may be appealed by either the government (OCC/OPLA) or the alien or both:
- a. First level is to Board of Immigration Appeals (BIA) – appeal must be filed within 30 days of the IJ's order. BIA can dismiss appeals, remand the case back to the IJ for further consideration, or conclude a decision in writing explaining the decision.
 - b. Second level is judicial review by U.S. Circuit Court of Appeals. Petition for Review must be filed within 30 days of BIA's decision.
17. Alien may request stay of removal from EOIR or BIA in conjunction with either of the following:
- a. Motion to Reopen – to allow presentation of evidence that was not previously available, filed within 90 days of the IJ or BIA order, **or**
 - b. Motion to Reconsider – request that IJ or BIA reconsider its decision based on precedent decision, filed within 30 days of the order.
18. Timelines for filing do not apply in Motions to Reopen on cases where the final order is in absentia



19. Travel documents to the alien's country of origin, country of last residence, or the country where the alien was ordered removed must be obtained from that country's consulate.
 - a. If travel documents cannot be obtained for detained alien within 90 days, case gets post-order custody review.
 - b. Alien may also designate another country for removal. Destination country must agree to accept the alien by the issuance of travel documents.
 - c. If unable to be removed at that time, and if alien is being released, the alien must be placed under an Order of Supervision (OSUP).

Instructor Note: Post order custody review, release under OSUP, acquisition of travel documents, and the process of repatriation (including transporting the alien by air to his home country) are covered in subsequent lessons.

20. An order of removal carries with it a bar to legally applying to reenter the United States – 5 years, 10 years, 20 years, or permanently, depending on the section of the law.

Instructor Note: A chart addressing when order of removal becomes final is included in the POCR lesson because date of final order becomes Day 1 of 90-day removal period.

21. Removal can occur when the order of removal becomes final (note that these are examples of some of the final order situations):
 - a. Final order of removal by the IJ where alien waived appeal rights.
 - b. Final order of removal by the IJ where the alien reserves right to appeal, but does not file the appeal within 30 days
 - c. Final order of removal by the IJ where alien reserved right to appeal, files an appeal, and then the BIA dismisses the appeal.

Instructor Note: A summary of the various types of orders and when each becomes final is covered in POCR.

22. Once 240 proceedings are completed:
 - a. Order of removal or grant of relief is issued by IJ. Written copy is provided for A-File.
 - b. Warrant of Removal/Deportation, I-205 is issued.



- 1) Form is served after the IJ decision becomes final and is signed by FOD, or designee
 - 2) Form is also used to verify the departure of the alien.
 - 3) Includes alien's photo and right index fingerprint
 - 4) Signatures of officer(s) doing fingerprinting and witness to departure
- c. Warning to Alien Ordered Removed or Deported, I-294
- 1) Outlines the time period alien is prohibited from applying to legally reenter the United States – 5, 10, 20 years or permanently
 - 2) Served along with I-205

C. EPO 3: Recognize which aliens are ineligible for voluntary departure and identify the consequences and actions associated with an alien failing to comply with the provisions of a Voluntary Departure order and the forms associated with a Voluntary Departure order.

1. Most aliens who are present in the United States and who are subject to 240 removal proceedings are eligible for voluntary departure, with these exceptions. Aliens who:
 - a. Are aggravated felons or terrorists and are deportable under INA § 237(a)(2)(A)(iii) or § 237(a)(4)(B)
 - b. Were previously granted voluntary departure after April 1, 1997
 - c. Violated terms of voluntary departure in the past 10 years
 - d. Are classified as "arriving aliens" (this can include LPRs who left the U.S. and are returning)

Instructor Note: Direct students to locate Form I-210 in the Student Guide and ask them to follow along.

2. If voluntary departure is granted by either the Field Office or Immigration Judge, complete an I-210 Voluntary Departure and Verification of Departure
 - a. Complete alien's name, address, phone, A-number, and FINS number.
 - b. DO will complete the information indicating the date VD was granted, authority granting VD (IJ, BIA, ERO), expiration of VD,



and departure type (at alien's expense, government expense, under safeguards).

- c. If the alien is granted an extension of the period of voluntary departure (not to exceed either 120 days if VD is granted prior to the conclusion of proceedings, or 60 days if VD granted at the conclusion of proceedings).
 - d. Provide details of manner of departure (transport details).
 - e. Alien and DO sign form.
 - f. Attach photo of alien and take alien's right index fingerprint.
 - g. Two originals are prepared – one for alien, one for A-File.
 - h. At departure, ERO escort (if VD granted "under safeguards") compares photo and fingerprint on I-210 presented by alien to alien's passport or other identity documentation and signs form.
 - 1) If unescorted, departure can also be verified using outbound records in DHS databases like ATSP and TECS MOD.
 - 2) Alien without escort must present I-210 to an immigration officer at point of departure or to U.S. Embassy in home country to verify departure
 - i. The I-210 provides official evidence of departure from the U.S.
3. Anytime an IJ grants voluntary departure, an alternate order of removal is also issued, which will go into effect if the alien fails to depart or fails to comply with any of the conditions of Voluntary Departure ordered by the Immigration Judge.
4. Failure to depart under a VD grant by the IJ
- a. If alien fails to depart on or before the date specified in the order, alternate order of removal becomes effective. If alien is removed under order of removal, he or she is subject to 10-year bar to apply for admission.
 - b. Alien is considered "fugitive" by ICE – that is, an alien who has failed to leave the U.S. following the issuance of a final order of removal.
5. If the agency exercises the right to deny voluntary departure, or the alien violates the terms of the voluntary departure in lieu of proceedings, an NTA is issued and the alien is placed in 240 removal proceedings



6. Departure deadlines and extension granted by the agency (FOD)
 - a.. If the IJ grants voluntary departure prior to the conclusion of proceedings under INA 240B(a), statutory maximum period to depart is 120 days.
 - b. If the IJ grants voluntary departure at the conclusion of proceedings under INA 240B(b), statutory maximum period to depart is 60 days.
 - c. If alien was not granted the statutory maximum time to depart, ICE may extend the expiration, but not to exceed the maximum period, if alien proves need and provides evidence of intent to depart.
 - d. Decision by the agency on extension must be rendered quickly because the alien is subject to serious penalties for failing to depart by the specified date.

D. EPO 4: Distinguish between those aliens who are and are not entitled to removal proceedings.

1. In accordance with the Fourteenth Amendment, INA § 240 outlines removal hearing procedures before an IJ, the various levels of appeal, and possibilities for relief
2. Several categories of aliens are not entitled to 240 removal hearing before an IJ and are precluded from certain forms of relief that are only available in immigration court.
 - a. If an alien falls within one of the classes not entitled to a hearing, removal under these procedures carries the same consequences as a removal order issued in an immigration court.
 - b. Because a removal hearing and appeal are not available to these individuals, the removal is faster and requires fewer resources.

Instructor Note: Discuss with students that it can take years for an alien (even one who is detained) to fully go through 240 Removal Proceedings. 240 Removal hearings take time to examine relief requests, may involve court case continuances, and the appeals process can be very lengthy. Deportation Officers should place aliens in proper proceedings to effect the removal the most expeditious manner in order to limit the government resources required for the case. Those proceedings listed in EPO 3 (aliens who are not entitled to removal proceedings) are generally faster ways of removing an alien than in 240 Removal Proceedings.

3. Aliens not entitled to a hearing are those subject to removal under the following sections of the INA:



- a. Aliens subject to reinstatement of a previously issued removal order under § 241(a)(5)
- b. Aliens subject to administrative removal under § 238(b) – Expedited Removal of Aggravated Felons

Instructor Note: In the field and elsewhere in this lesson, this is referred to as an Administrative Removal. In the law, it is Expedited Removal of Aggravated Felons.

- c. Aliens subject to expedited removal under § 235(b)
 - d. Aliens subject to removal under § 217, the Visa Waiver Program
 - e. Crewmembers, under § 252(b); stowaways, under § 235(a)(2) and 241(d)
 - f. Aliens falling into distress and requesting removal at U.S. expense (§ 250)
 - g. Alien witnesses or informants holding an S-5, S-6, or S-7 nonimmigrant visa (8 CFR 236.4)
 - h. Aliens inadmissible on national security grounds (§ 235(c))
- 4. Alien who is entitled to a hearing in 240 removal proceedings may waive the right to a hearing before the IJ and agree to stipulated order of removal
 - 5. In addition to those aliens not entitled to a removal hearing, many aliens waive their right to a formal hearing and elect, instead, to voluntarily return to their home country. Such voluntary return or voluntary departure is not a removal and does not include the same bars to legal reentry.

Instructor Note: This lesson focuses on the process of removal when the alien is not eligible for or does not request voluntary departure. The asylum process is covered in another lesson.

Note that in many situations, the ERO Officer will be able to determine charges against the alien and which section of the INA applies based on records checks before the officer ever arrests the alien. In that case, most processing is completed in advance.



II. Demonstration

Instructor Note: Refer students to Antonio Romano scenario and walk through preparing the forms for this case.

Demonstration 1: Antonio Romano

You learn that a state penitentiary inmate named Antonio Romano is to be released after serving a five-year sentence for robbery. An immigration detainer has been lodged, and the following information is given on the I-213.

Subject information

Name:	Antonio Romano
Date of Birth:	June 23, 1965
Place of Birth:	Rome, Italy
Mother's Name:	Marisa Rossi
Mother's DOB:	January 7, 1946
Mother's Place of Birth:	Potenza, Italy
Father's Name:	Allesandro Romano
Father's DOB:	December 6, 1943
Father's Place of Birth:	Torino, Italy
Date Subject Entered United States:	May 5, 2003
Location Subject Entered United States:	Detroit, Michigan airport
Reason for coming to the United States:	Married to USC and entering to live with his wife
Status at entry:	IR1/ immigrant
Address in United States:	112 ½ Beacon St., Boston, MA
Citizenship:	Italian

In May 1998, Romano met Nyota Fujioka, a USC who was studying in Italy. They married in Italy in May 2000 and moved to the United States in June 2003, when she took a management position with a multinational firm with offices in Boston.

Seven years ago, Romano was running short of money and wanted a gift for his wife, so Romano robbed a pub in Boston, MA, getting a total of more than \$7,000. Romano was arrested and charged with robbery. He was ultimately convicted and sentenced to five years in prison and is to be released soon.

1. Is Romano subject to removal from the United States? Why or why not?



Yes – conviction for aggravated felony.

2. If so, is he subject to removal under § 240?

Yes – as an LPR, he must have a hearing.

3. Can any Deportation Officer issue a Notice to Appear?

No – issuing officer must be SDDO or above.

4. Copies of the conviction documents were not available when the Deportation Officer took custody of Romano. How long can ICE have Romano in custody before it must serve an NTA on him?

48 hours

5. Who has the burden of proof in this case – the alien or the government?

The government, because he is being charged as deportable

6. If the IJ orders Romano's removal after a complete hearing where Romano was present, under what conditions could he file a Motion to Reopen?

Only if there were new facts in the case to be introduced

7. What forms and other information are needed to begin the removal process in this case?

- *I-213 with full narrative, charges, and recommendation*
- *I-862 Notice to Appear*
- *I-200 Warrant of Arrest*
- *I-826 Notice of Rights / Request for Disposition - Not eligible for voluntary departure*
- *List of Free Legal Service Providers*
- *I-265 Notice to Appear/Bond and Custody Processing Worksheet*
- *I-286 Custody Determination*

The ERO Officer must also include copies of the alien's conviction document, photos, fingerprints, and passport if available.



Demonstration 2: Miguel Garcia

Miguel Garcia was arrested on a shoplifting charge. In an interview, he acknowledged that he came to the United States from Mexico three weeks before and was present without admission. Searches in EAGLE and NCIC found no previous record. Garcia was issued an NTA and was detained by ICE. At Garcia's Master Hearing, he was granted Voluntary Departure by the IJ and was given 30 days to depart the country. Along with his VD order, the Judge also issued an Alternate Order of Removal. Garcia failed to depart the country and his VD order expired.

1. What factors allowed Garcia to be eligible for voluntary departure?

Garcia was not subject to removal under 237(a)(2)(A)(iii) or 237(a)(4)(B); had no prior grant of voluntary departure; has not violated the terms of voluntary departure in the past 10 years; is not classified as an arriving alien.

2. Which form is used to verify the Voluntary Departure of Garcia?

I-210 Voluntary Departure and Verification of Departure

3. What happened when Garcia failed to depart within the 30-day departure period?

The day after the VD order expired, the Alternate Order of Removal took effect and Garcia became a Final Order of Removal with a 10 year bar to re-entry.

III. Student Practice

Felipe Sandoval was arrested by the Podunk County Sheriff on disorderly conduct and simple assault following a bar fight involving Zeta gang members (his associates) and other bar patrons. He says he is a lawful permanent resident, originally from Guatemala, who works as a window installer for Podunk Windows. Database searches find convictions within the past five years for domestic assault (sentenced to counseling plus restraining order), DWI, aggravated assault (sentenced to six months), sexual misconduct (one year with six months suspended).

1. If Sandoval is subject to removal from the United States, may he be placed in 240 proceedings? Why or why not?

Amenable to removal under § 240 proceedings because he is an LPR but is removable based on multiple, separate convictions and their associated sentence lengths.

2. What documentation must be completed to begin the removal process?

- *I-213 with full narrative, charges, and recommendation*
- *I-862 Notice to Appear*
- *I-826 Notice of Rights / Request for Disposition*



- *List of Free Legal Service Providers*
- *I-265 Notice to Appear/Bond and Custody Processing Worksheet*
- *I-286 Custody Determination*
- *I-200 Warrant of Arrest*

IV. Feedback and Remediation

Provide feedback to students that explains why their answers and explanations are correct or incorrect. Provide additional examples to clarify any misconceptions.



CONCLUSION

I. Summary of Main Ideas

The basic process for removal is under § 240, which provides an alien a hearing before an IJ, who may order the alien's removal, allow voluntary departure, grant relief from removal, or terminate the proceedings.

The § 240 removal process is initiated when the Notice to Appear (NTA), I-862, is filed with EOIR. Other forms that must be used are Notice of Rights and Request for Disposition, I-826, and Notice of Custody Determination, I-286, along with Warrant of Arrest, I-200, and Bond and Custody Worksheet, I-265. Once there is a final order of removal, Warrant of Removal/Deportation, I-205, and Warning to Alien Ordered Removed or Deported, I-294 are served on the alien.

Most aliens subject to 240 removal proceedings are eligible for voluntary departure. Exceptions include: aggravated felons or terrorists, arriving aliens, aliens previously granted VD or violated VD terms in past 10 years. An alternate order of removal is issued by the IJ along with the grant of VD. Maximum time allowed for departure is 60 or 120 days, depending on when in proceedings VD is granted.

The INA provides for non-hearing removal of aliens subject to removal under:

- § 241(a)(5) – Reinstatement of removal order
- § 238(b) – Expedited removal of aggravated felons
- § 235(b) – Expedited removal
- § 217 – Visa Waiver Program
- § 252(b) – Crewmen
- § 235(a)(2) – Stowaways
- § 250 – Falling into distress
- 8 CFR 236.4 – Alien witnesses or informants holding S-5, S-6, or S-7 visas
- § 235(c) – Aliens inadmissible on national security grounds

II. Integration

Although processing under § 240 is the principal means of handling a removal, there are specific conditions under which an alien is not entitled to a hearing and can be given an order of removal by an authorized ICE officer. These will be discussed in the segments of this lesson that follow.

III. Objectives

You should now be able to:

- Outline the overall sequence of removal proceedings under § 240.
- Determine the forms, content, and process for removal under § 240 in accordance with the statutory requirements.



- Recognize which aliens are ineligible for voluntary departure and identify the consequences and actions associated with an alien failing to comply with the provisions of a Voluntary Departure order and the forms associated with a Voluntary Departure order.
- Distinguish between those aliens who are and are not entitled to a removal hearing.

IV. Test or Final Activity

This information will be tested in the Case Disposition multiple-choice exam and in the Encounter to Detention PE.



Segment 2: § 241(a)(5) Reinstatement of Removal Orders

INTRODUCTION

I. Motivation

A key priority for ICE enforcement is the removal of aliens who obstruct immigration controls, including aliens who reenter the country illegally after removal.

II. Objectives

A. Terminal Performance Objective (TPO)

Given an alien who is subject to removal, determine the process, procedures, forms, and form content so that the proper documentation is used for the required type of removal.

B. Enabling Performance Objective

EPO 4: Determine the forms, content, and process for reinstatement of a prior order of removal under § 241(a)(5), in accordance with statutory requirements.

III. Review of the Past

1. Under what situations is an alien who is subject to removal not entitled to a hearing before an IJ?
 - *Aliens subject to expedited removal under INA § 235(b)*
 - *Aliens subject to administrative removal under INA § 238(b)*
 - *Aliens subject to administrative removal under INA § 217*
 - *Aliens subject to reinstatement of a previously-issued removal order under INA § 241(a)(5)*
 - *Crewmembers (§ 252(b)) and stowaways (§ 235(a)(2) and 241(d))*
 - *Alien witnesses or informants holding S-5, S-6, or S-7 nonimmigrant visas (8 CFR 236.4)*
 - *Aliens falling into distress and requesting removal at U.S. expense (§ 250)*
 - *Aliens inadmissible on national security grounds under § 235(c)*
2. What set of three forms is used only for a § 240 removal process?
 - *I-862: Notice to Appear (NTA)*
 - *I-826: Notice of Rights and Request for Disposition*
 - *I-286: Notice of Custody Determination*

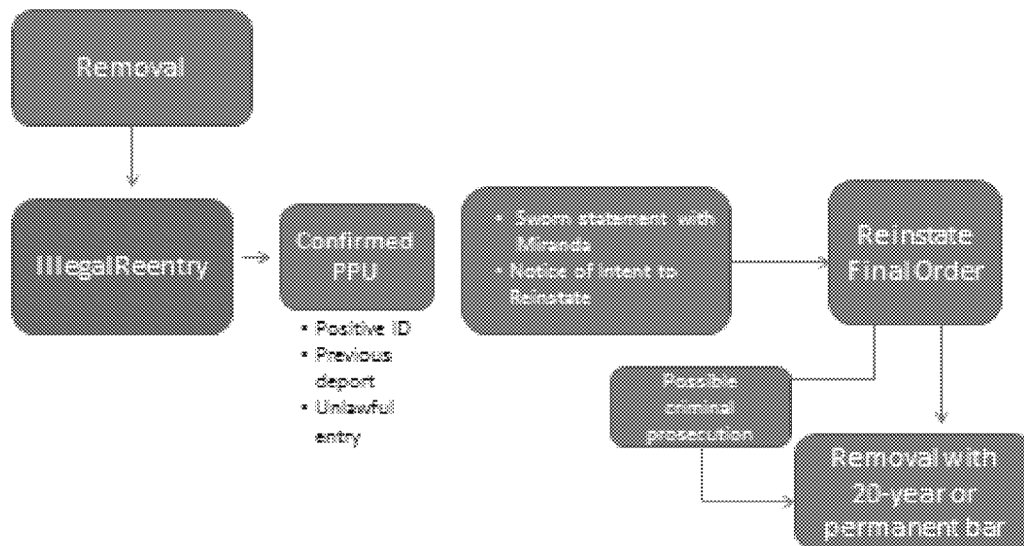


3. What is an I-205?

Final order of removal (Warrant of Removal/Deportation) issued by FOD or designee after 240 proceedings.

IV. Main Idea

Reinstatement – 241(a)(5)



This flowchart illustrates the process of reinstatement of a prior removal order under § 241(a)(5) of the INA where an alien who has been removed and then illegally reenters the U.S. If that individual is apprehended and his identity confirmed, he will be placed in a non-hearing removal process, reinstating the original removal order. He may also be subject to criminal prosecution for the offense of illegally reentering the country (8 USC 1326).

V. Agenda

- Forms, content, and process for reinstatement of a prior order of removal under § 241(a)(5)
- Questions on the appropriate forms, content, and process for various scenarios



INSTRUCTION

I. Explanation

A. EPO 4: Determine the forms, content, and process for reinstatement of a prior order of removal under § 241(a)(5), in accordance with statutory requirements.

1. Applies to an alien who:
 - a. Illegally reenters the United States after being deported, excluded, or removed under a final order with a bar to reentry
 - b. Illegally reenters the United States after leaving the country of his own free will while under a final order of removal.
 - c. Illegally reenters the United States after leaving the country of his own free will and after the expiration of an IJ-granted voluntary departure period. (The voluntary departure alternate order of removal has become a final order.)
2. Does **not** apply to:
 - a. An alien who was granted voluntary departure, left the United States in compliance with that grant, and then illegally reenters the United States.
 - b. An alien who reenters legally after waiting until the bar to reentry expires and then is again found deportable.

Instructor Note: Note that identity of subject must be confirmed through use of fingerprints: PPU = Positive identification, Previous deport, Unlawful entry.

Because with a reinstatement the subject's case is not referred to an IJ, ERO Officers must evaluate all available evidence before determining that an alien was previously removed and illegally reentered the United States.

Many jurisdictions require that all reentry cases be referred to the AUSA for prosecution and/or declination of prosecution and subsequent TECS case management duties.

Emphasize the importance of ensuring that the ROP is complete. Refer to Memorandum: Record of Proceedings in Reinstatement and Administrative Removal Cases (April 27, 2006).

3. Processing of reinstatement under § 241(a)(5) – in accordance with 8 CFR 241.8.



- a. To process an alien under § 241(a)(5), ERO Officer must clearly establish:
 - 1) **Positive identity:** The alien's identity, matched to an order of removal
 - 2) **Previous removal:** That the alien was previously excluded, deported, or removed or that he left while subject to a final order of removal
 - 3) **Unlawful entry:** That the alien did in fact reenter illegally
- b. If there is any question regarding these three factors, the alien must be processed for removal under another applicable section: § 240 proceedings; § 238 administrative removal (if aggravated felony); or other appropriate section.
- c. Document on I-213 if the subject admits to having been previously excluded, deported, or removed.
- d. Obtain subject's A-File, or needed documents inside the file, and verify the subject's identity with IDENT/IAFIS and other records checks.
- e. A-File should contain the previously executed Warrant of Removal/Deportation (I-205) and Warning to Alien Ordered Removed or Deported (I-294) or Notice to Alien Ordered Removed/Departure Verification (I-296).
 - 1) Also must include the final order for which the alien was previously removed. ERO officers may be reinstating other removal orders other than IJ order (I-860, I-851A, etc.)
 - 2) Previously issued I-205 provides authority to detain.
- f. Interview the subject (using an interpreter if necessary) and record the subject's statement on the Record of Sworn Statement in Affidavit Form, I-215B, or Record of Sworn Statement in Administrative Proceedings, I-877.

Instructor Note: Refer students to I-215B and I-877 in Student Guide.

- 1) Because the I-215B may be used for criminal prosecution, Miranda warning must be given.
- 2) If the subject declines to make a statement, that information is recorded.



- 3) An ERO Officer conducting an interview with the subject may use Warning as to Rights – Interview Log, I-214, if pursuing a criminal case (the form includes a provision entitling individual to representation if he cannot afford it).
- g. Sworn statement must include this question and the alien's response to it: "Do you have any fear of persecution or torture should you be removed from the United States?"
(8 CFR 1208.31 – Reasonable fear of persecution or torture determinations involving aliens ordered removed under section 238(b) of the Act and aliens whose removal is reinstated under section 241(a)(5) of the Act)

Instructor Note: A brief overview of asylum and withholding of removal and a portion of the I-589 used to request these forms of relief are included at the end of the Student Guide. The topic is covered in more detail in the Special Status and Forms of Relief lesson.

- 1) Alien in removal under 241(a)(5) is not eligible for asylum but must be referred to asylum officer for reasonable-fear interview. While they are statutorily ineligible for asylum they may be eligible for Withholding of Removal or Deferral of Removal Under the Convention Against Torture.
- 2) If reasonable fear is found by the asylum officer, the asylum officer refers case to the IJ for fear-only proceedings to adjudicate withholding or deferral of removal under Convention Against Torture claims. If reasonable fear is not found by the asylum officer the alien may still choose to have the IJ review the fear claim.
 - a) IJ reviews fear claim only.
 - b) Withholding or deferral of removal are country specific.
 - c) An alien granted withholding of removal or deferral of removal under the Convention Against Torture is not given relief from removal. The alien can be removed to an alternate country.
- h. Prepare Notice of Intent/Decision to Reinstate Prior Order, I-871.
 - 1) Subject is asked to acknowledge receipt of the form and to indicate whether he wishes to contest the determination.
 - 2) Subject may present information to rebut the determination and can review the government evidence.



- 3) SDDO or higher reviews the information and determines whether further evaluation or investigation is warranted.
 - 4) If the decision is to reinstate the removal order, the SDDO or higher signs the bottom of the I-871.
 4. In addition to reinstatement of removal charge, alien may also be subject to criminal prosecution for reentering the U.S. in violation of the order. An ROP must be created.
 - a. ROP is intended to allow the case to be defended in federal court.
 - b. ROP is compiled and stored in the A-File:
 - 1) Same documents are required for the A-File and kept on the left-hand side, distinguishing them from administrative forms, which go on the right side of the A-File.
 - 2) Recommended that two or more signed originals are made of forms for ROP and A-File and duplicates are identified as "duplicate original."
 - 3) ROP documents can then be removed and provided for use in court.
 - c. An index of the material in the ROP must be provided and a certification signed by deciding officer.
 5. After the signing of the I-871, a new I-205 is issued, citing that removal is pursuant to § 241(a)(5).
 - a. I-205 includes subject's photo and fingerprint to compare to subject at time of departure. Departure is verified.
 - b. Subject is also issued I-294, indicating a 20-year bar, unless an aggravated felon, which would indicate a lifetime bar.



II. Demonstration

David Fara was convicted of sexual assault and is serving a five-year sentence at the state prison. He is due to be released.

Subject information

Name:	David Fara
Date of Birth:	May 26, 1983
Place of Birth:	Prague, Czechoslovakia
Mother's Name:	Darina Hanks Fara
Mother's DOB:	September 16, 1960
Mother's Place of Birth:	Prague, Czechoslovakia
Father's Name:	Lukas Fara
Father's DOB:	February 14, 1958
Father's Place of Birth:	Prague, Czechoslovakia
Date Subject Entered United States:	December 25, 2008
Location Subject Entered United States:	Unknown – illegal
Reason for coming to the United States:	Seeking work
Status at entry:	Illegal
Reason for arrest:	Sexual Assault
Address in United States:	10 Leroy St., New York, NY
Citizenship:	Czech

During the interview, subject stated that he is a citizen of the Czech Republic who came to the U.S. to find work and entered by illegally crossing the northern border in December 2008 at an unknown location. He made his way to New York and found work at a bakery. Six years ago Fara was arrested after he was accused of rape by a woman who frequented the bakery. He was convicted of sexual assault. He has served his sentence and is about to be released from jail.

Fingerprint checks reveal the subject was previously removed to the Czech Republic in 2005 under the name David Fara.

You have located his A-File and acquired his previous order of removal.



1. Is Fara subject to removal from the United States? Why or why not?

Yes – He was previously removed, so his previous order of removal can be reinstated. He is also subject to removal as an aggravated felon.

2. If so, is he entitled to removal proceedings before an IJ?

No. With a reinstatement of the previous order, he is not entitled to a hearing.

3. What question must the officer ask as part of the sworn statement?

“Do you have any fear of persecution or torture should you be removed from the United States?”

4. Could Fara be granted asylum? If not, what could the alien be granted?

No, only for a withholding of removal and DCAT, which is issued on a country-by-country basis

5. What forms and other information would be needed to begin the removal process in this case?

- *I-213 with full narrative, charges, and recommendation*
- *I-215B Record of Sworn Statement in Affidavit Form [or Record of Sworn Statement in Administrative Proceedings, I-877]*
- *Copy of previous removal order*
- *Previously executed I-205 Warrant of Removal & Previously executed I-294 Warning to Alien Ordered Removed or Deported, or I 296 Notice to Alien Ordered Removed/Departure Verification*
- *I-871 Notice of Intent/Decision to Reinstate Prior Order*
- *Alien’s conviction document, photos, fingerprints*
- *Any evidence provided by the alien*
- *Any countering documentation that rebuts the alien’s assertion that reinstatement is improper*
- *New I-205 and I-294*

6. Does all this material go into the A-File?

Duplicate originals of the legal documents are compiled into a ROP that are held with the A-File and are used if the case is pursued in federal court.



III. Student Practice

Gregor Milosovich, a citizen of Serbia, is about to be released from Iowa State Penitentiary after serving 18 months of a three-year sentence for assault and battery. When interviewed, Milosovich admitted that four years ago he entered by paying a trucker to smuggle him across the border.

Through biometrics and record checks it was determined that the Milosovich had been removed previously – in 2010 he had been removed under another name.

1. Is Milosovich subject to removal from the United States? Why or why not?

Yes – He was previously removed, so his previous order of removal can be reinstated under § 241(a)(5). He is also subject to the removal bar as an aggravated felon.

2. If so, is he entitled to removal proceedings before an IJ? Why or why not

No. With a reinstatement of the previous order, he is not entitled to a hearing.

3. What question must the officer ask as part of the sworn statement?

“Do you have any fear of persecution or torture should you be removed from the United States?”

4. Could Milosovich be granted asylum? If not, what could the alien be granted?

No, only eligible for a withholding of removal or DCAT

5. What forms and other information would be needed to begin the removal process in this case?

- *I-213 with full narrative, charges, and recommendation*
- *I-215B Record of Sworn Statement in Affidavit Form [or Record of Sworn Statement in Administrative Proceedings, I-877]*
- *Copy of previous removal order*
- *Previously executed I-205 Warrant of Removal & Previously executed I-294 Warning to Alien Ordered Removed or Deported, or I-296 Notice to Alien Ordered Removed/Departure Verification*
- *I-871 Notice of Intent/Decision to Reinstate Prior Order*
- *Alien’s conviction document, photos, fingerprints*
- *Any evidence provided by the alien*



- *Any countering documentation that rebuts the alien's assertion that reinstatement is improper*
- *New I-205 and I-294*

IV. Feedback and Remediation

Provide explanations as to why answers are correct or incorrect. Use additional examples as needed to ensure comprehension.

CONCLUSION

I. Summary of Main Ideas

Aliens who have been removed and then have reentered the United States illegally are subject to reinstatement of the original removal order and are therefore not entitled to a hearing before an IJ. They can also be criminally prosecuted for the reentry violation.

Before proceeding with a reinstatement, however, make sure you can document PPU: positive identification, previous deport, unlawful entry.

Forms used include:

- I-213
- For criminal prosecution I-215B and I-214, or for administrative proceeding I-877
- Copy of previous removal order
- Previously executed I-205, previously executed I-294 or I-296
- I-871 signed by SDDO or higher
- New I-205 and I-294

For criminal prosecution, an ROP must be created.

II. Integration

Another non-hearing procedure is that used for aliens convicted of certain offenses. Administrative removal is the subject of the next segment of this lesson.

G15

III. Objectives

You should now be able to prepare documentation for reinstatement of a removal order under §241(a) (5), in accordance with statutory requirements.

IV. Test or Final Activity

Knowledge of the forms, content, and process will be tested in the Case Disposition multiple-choice exam and in the Encounter to Detention PE.



Segment 3: § 238(b) Administrative Removal Orders (Expedited Removal of an Aggravated Felon)

INTRODUCTION

I. Motivation

Administrative removals of aggravated felons is a top ICE priority. An alien who is not an LPR and has an aggravated felony conviction can be removed without a hearing before an IJ. This places an important responsibility on the ERO Officer to ensure that all procedures are carefully followed.

II. Objectives

A. Terminal Performance Objective (TPO)

Given an alien who is subject to removal, determine the process, procedures, forms, and form content based on requirements associated with removals under the applicable section of the INA.

B. Enabling Performance Objective (EPO)

EPO 5: Determine the forms, content, and process for an administrative removal under § 238(b), in accordance with the statutory requirements.

III. Review of the Past

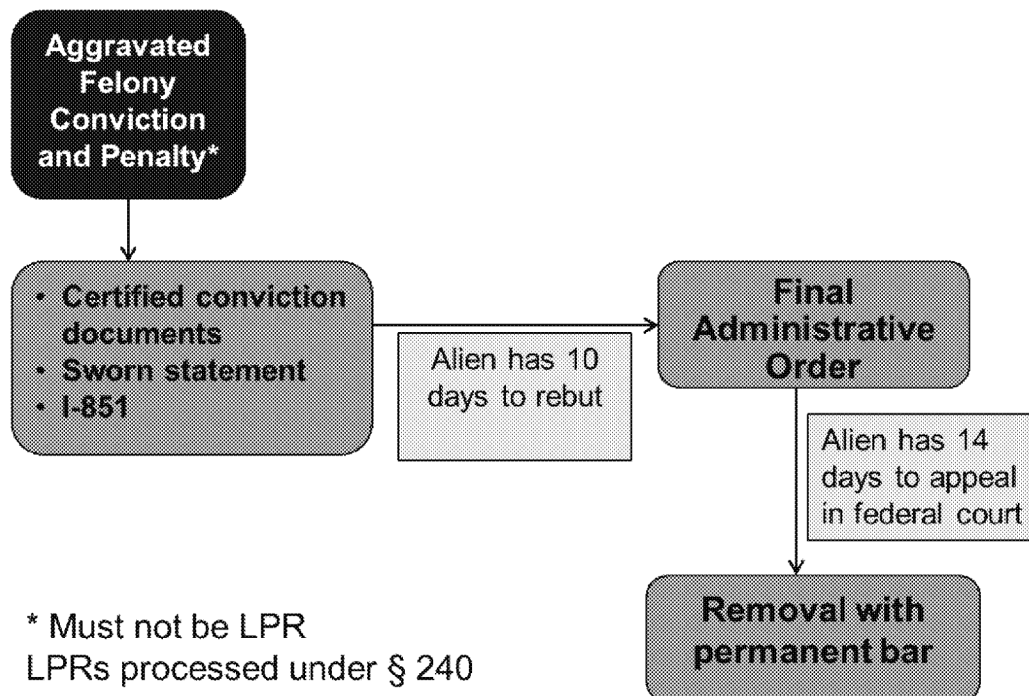
1. Under what situations is a removable alien (who is not a LPR) not entitled to a removal hearing before an IJ?
 - *Aliens subject to expedited removal under INA § 235(b)*
 - *Aliens subject to administrative removal under INA § 238(b)*
 - *Aliens subject to administrative removal under INA § 217*
 - *Aliens subject to reinstatement of a previously issued removal order under INA § 241(a)(5)*
 - *Crewmembers (§ 252(b)) and stowaways (§ 235(a)(2) and 241(d))*
 - *Alien witnesses or informants holding an S-5, S-6, or S-7 nonimmigrant visa (8 CFR 236.4)*
 - *Aliens falling into distress and requesting removal at U.S. expense (§ 250)*
 - *Aliens inadmissible on national security grounds (§ 235(c))*
2. What is a ROP, for what is it used, and where is it housed?
 - *Record of Proceedings – official material constituting the record of any application, petition, hearing or other proceeding.*
 - *Used if the case is presented in federal court.*



- *Material is positioned on the left side of the A-File. A separate set of duplicate originals of the ROP may be stored in the A-File so that these can be used instead of the A-File.*

IV. Main Idea

Administrative Removal Under § 238(b) – Expedited Removal of Aggravated Felon



This flowchart illustrates the process of a removal under § 238(b) of the INA. Once an alien (who is not an LPR) has been convicted of an aggravated felony, he is subject to removal without a hearing under § 238(b). Particular care must be taken to adhere to procedures and ensure that all documentation is in order, with the alien's identity confirmed and conviction documents certified. When the final removal order is issued, there is a permanent bar to reentry.

V. Agenda

- Forms, content, and process for administrative removal in accordance with § 238(b)
- Questions on the appropriate forms, content, and process for various scenarios



INSTRUCTION

I. Explanation

A. EPO 6: Determine the forms, content, and process for an administrative removal under § 238(b) in accordance with the statutory requirements.

1. Applies to an alien who is not an LPR and who has a final conviction for an aggravated felony – as defined in INA § 101(a)(43)
 - a. Authorizes administrative proceedings – without a hearing before an IJ – to determine deportability under INA § 237(a)(2)(A)(iii) and to issue a removal order
 - b. § 238(c) states there is a “presumption of deportability” if an alien is convicted of an aggravated felony, as defined under 101(a)(43). The “presumption of deportability” includes EW/PWA aliens
 - c. Cannot apply to an alien who is an LPR but may be used with a CR, a conditional permanent resident – such as the spouse or child of a U.S. citizen or LPR

Student Note: Conditional Permanent Resident status is granted by USCIS and would therefore need to be rescinded by USCIS. Consult with ERO management, USCIS, and OCC for further guidance on processing Conditional Permanent Residents.

2. There must be both:
 - a. Conviction, a guilty plea, or *nolo contendere*, or alien has admitted sufficient facts to warrant a finding of guilt **and**
 - b. Judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.
3. Procedure for administrative removal under § 238(b):
 - a. ROP must be created.
 - 1) ROP is intended to allow the case to be defended in federal court.
 - 2) ROP is compiled and stored in the A-File and may be removed and provided for use in court.

(b)(7)(E)



- d. Obtain certified copies of conviction documents to substantiate aggravated felony. Include memo from local OPLA or I-265 signed by OCC/OPLA approving legal sufficiency certifying that conviction rises to the level of an aggravated felony.
- e. Include additional information to substantiate the aggravated felony charge and conviction such as elements of the crime, transcript, presentencing investigation, colloquy or allocution on guilty plea
- f. Interview subject and record information on Record of Sworn Statement in Affidavit Form, I-215B or Record of Sworn Statement in Administrative Proceedings, I-877.
 - 1) If the subject declines to provide a statement, that fact is recorded on the form.
- g. Sworn statement must include this question and the alien's response to it: "Do you have any fear of persecution or torture should you be removed from the United States?" (8 CFR 1208.31 – Reasonable fear of persecution or torture determinations involving aliens ordered removed under section 238(b) of the Act and aliens whose removal is reinstated under section 241(a)(5) of the Act

Instructor Note: A brief overview of asylum and withholding of removal and a portion of the I-589 used to request these forms of relief are included at the end of the Student Guide. The topic is covered in more detail in the Special Status and Forms of Relief lesson.

- h. Also include all evidence (briefs and other documents) regarding deportability submitted by either party. Clear, convincing, and unequivocal evidence must support the deportability charge.
- i. An index must list all documents included in the ROP and accompanied by a certification signed by the deciding officer.

(b)(7)(E)



- 3) Alien must be provided with list of available free legal services.
- k. Alien has opportunity (10 calendar days if served in person or 13 calendar days if served by mail) to inspect the government's evidence and offer a rebuttal to the deportation charge.
 - 1) Subject's written response is included in the A-File and ROP
4. Aliens subject to administrative removal under § 238(b) are only eligible for withholding of removal or Deferral of Removal under Convention Against Torture (DCAT) – not eligible for asylum (8 CFR 1208.31 Reasonable fear of persecution or torture determinations involving aliens ordered removed under section 238(b) of the Act and aliens whose removal is reinstated under section 241(a)(5) of the Act).
 - a. Alien in removal proceeding under 238(b) is not eligible for asylum but must be referred to asylum officer for reasonable-fear interview.
 - b. If reasonable fear is found by the asylum officer, the asylum officer refers the case to the IJ for withholding-only proceedings to adjudicate withholding or deferral of removal under Convention Against Torture claims. If reasonable fear is not found by the asylum officer the alien may still choose to have the IJ review the fear claim.
 - 1) Withholding or deferral of removal are country specific.
 - 2) An alien granted withholding of removal or deferral of removal under the Convention Against Torture is not given relief from removal. The alien can be removed to an alternate country.
 - 3) Withholding of removal does not apply to alien convicted of agg felony where the sentence was 5 years or more. The IJ may consider any other offense as a "particularly serious crime" and determine they are ineligible for withholding of removal. These aliens may be eligible for DCAT.
 - c. Alien may request withholding of removal under § 241(b)(3) by checking the box on the back of the I-851 or by requesting withholding in writing in response to I-851.
 - d. I-851 issuing officer is SDDO or higher
5. A deciding service officer issues a Final Administrative Removal Order, I-851A.



- a. Deciding officer (signs I-851A) may not be the same person as the issuing officer (signs I-851)
 - 1) Deciding officer must be equal to or above the ranking of the issuing officer.
 - 2) The issuing officer is any officer authorized to issue an NTA.
 - b. Decision of deciding officer is not subject to appeal to Board of Immigration Appeals.
 - c. The alien has 14 days to file the petition for review with the U.S. Circuit Court of Appeals. The removal order cannot be carried out until the 14-day waiting period expires unless the alien waives the 14-day period.
6. When alien is to be transported for repatriation, serve the Warrant of Removal/Deportation, I-205.
- a. Serve Warning to Alien Ordered Removed or Deported (I-294), which is marked to inform alien that he may not return "at any time," because the removal is for an aggravated felony conviction. (permanent bar from the U.S.)
7. At any point in processing a case for administrative removal under INA 238(b), the deciding official may terminate the proceedings, have an NTA issued, and conduct the removal proceeding in accordance with § 240

II. Demonstration

Chris Tremblay is in prison, convicted for second degree murder, and about to be released.

Subject information

Name:	Chris Tremblay
Date of Birth:	April 15, 1984
Place of Birth:	Dawson City, Canada
Mother's Name:	Olivia Tremblay
Mom's DOB:	October 31, 1967
Mom's Place of Birth:	Charlottetown, Canada
Father's Name:	Michael Tremblay
Father's DOB:	July 4 1965



Father's Place of Birth:	Yellowknife, Canada
Date Subject Entered United States:	April 4, 2004
Location Subject Entered United States:	Niagra Falls, NY
Reason for coming to the United States:	Find work
Status at entry:	Swam the river
Reason for arrest:	Murder
Address in United States:	31 Spooner St. Quahog, RI
Citizenship:	Canadian

Interview information and record checks confirm that the subject's parents were both born in Canada and have never lived in the United States. The subject says he entered the U.S. illegally and subsequently married a USC. His wife and child live in Quahog, RI. Records show that he pled guilty to second-degree murder and was sentenced to a prison term of not less than 10 years. Tremblay is to be released soon.

1. Is Tremblay subject to removal from the United States? Why or why not?

Yes – He has a final conviction for murder and a judge has imposed a penalty.

2. If so, is he entitled to removal proceedings before an IJ?

No. With an aggravated felony conviction, he is subject to administrative removal under 238(b) because he is not a lawful permanent resident.

3. What verification of the alien's criminal record is required?

Certified copies of the conviction documents and OPLA provides a memo, or signs the I-265, attesting to the fact that the charge on which the alien was convicted is an aggravated felony.

4. What other materials may be included to substantiate the aggravated felony charge?

Documentation such as transcripts, pre-sentencing report, any allocution associated with a guilty plea, etc.

5. Is Tremblay eligible for any type of relief from removal?

No. Murder with the 10-year sentence would preclude him from being granted withholding of removal. With a withholding of removal or DCAT grant the alien still can be removed – just not to the specific country where his fear was substantiated.



6. Who can authorize an administrative removal under 238(b)?

Deciding officer on the I-851A may not be the same person who issued the I-851. Deciding officer must be equal to or above the issuing officer – that is, SDDO or higher.

7. What forms and other information would be needed to begin the removal process in this case?

- *I-213 with full narrative, charges, and recommendation*
- *Certified conviction documents and memo from OPLA*
- *I-215B Record of Sworn Statement in Affidavit Form [or Record of Sworn Statement in Administrative Proceedings, I-877A]*
- *I-851 Notice of Intent to Issue a Final Administrative Removal Order*
- *I-851A Final Administrative Removal Order*
- *Any evidence provided by the alien*
- *Any supplemental evidence relied on by the government to support the charges*
- *All admissible evidence submitted by either party regarding deportability*

8. What documents must accompany the ROP?

An index of all documents in the ROP and a certification signed by the deciding officer

III. Student Practice

Delia Alladin arrived Washington Dulles International Airport from the Philippines on a tourist visa. One month later, she was arrested on aggravated assault charges, she entered a guilty plea, and was sentenced to three years imprisonment. She is about to be released.

1. Is Alladin subject to removal from the United States? Why or why not?

Yes, she has a final conviction with an imposed penalty.

2. If so, is she entitled to removal proceedings before an IJ?

No. With an aggravated felony conviction, she is subject to administrative removal because she is not a lawful permanent resident.

3. What verification of the alien's criminal record is required?

Certified copies of the conviction documents and OPLA provides a memo, or signed the I-265, attesting to the fact that the charge on which the alien was convicted is an aggravated felony



4. What other materials may be included to substantiate the aggravated felony charge?

Documentation such as transcripts, pre-sentencing report, any allocution associated with a guilty plea, etc.

5. Is Alladin eligible for any type of relief from removal under 238(b)?

No, only for a withholding of removal or DCAT. She will not be removed to a country where she would be tortured

6. Who can authorize an administrative removal under 238(b)?

Deciding officer on the I-851A may not be the same person who issued the I-851. Deciding officer must be equal to or above the issuing officer – that is, SDDO or higher.

7. What forms and other information would be needed to begin the removal process in this case?

- *I-213 with full narrative, charges, and recommendation*
- *Certified conviction documents and memo from OPLA*
- *I-215B Record of Sworn Statement in Affidavit Form (or Record of Sworn Statement in Administrative Proceedings, I-877A)*
- *I-851 Notice of Intent to Issue a Final Administrative Removal Order*
- *I-851A Final Administrative Removal Order*
- *ROP*

IV. Feedback and Remediation

Review answers to the questions. Provide explanations for correct and incorrect answers.



CONCLUSION

I. Summary of Main Ideas

An alien who is not an LPR and has been convicted of an aggravated felony (as attested to by OPLA) and a penalty is subject to administrative removal without a hearing.

Because there is no hearing it is essential that the process be fully documented through the ROP and that the deciding officer in the case be of equal or higher position than the issuing officer.

Forms and documents used include:

- I-213
- Certified conviction documents and OPLA memo
- I-215B or I-877A
- I-851 Notice of Intent
- I-851A Final Administrative Removal Order
- Any evidence provided by the alien
- Any supplemental evidence relied on by government to support charges
- All admissible evidence regarding deportability

II. Integration

There are a number of situations in which an alien may be removed without benefit of a hearing. These are covered in the next segment of this lesson.

III. Objectives

You should now be able to prepare determine the forms, content, and process for an administrative removal of an alien with an aggravated felony conviction under § 238(b), in accordance with the statutory requirements.

IV. Test or Final Activity

Knowledge of the forms, form content, and process will be tested in the Case Disposition multiple-choice exam and the Encounter to Detention PE.



Segment 4: Other Removals

INTRODUCTION

I. Motivation

The types of cases you will encounter will vary greatly depending on where you work – near the border, in a major city, near a seaport. The cases discussed here may be ones you process less frequently, but you will need to recognize the situations and how the cases should be handled.

II. Objectives

A. Terminal Performance Objective (TPO)

Given an alien who is subject to removal, determine the process, procedures, forms, and form content so that the proper documentation is used for the required type of removal.

B. Enabling Performance Objectives (EPOs)

EPO 6: Determine the forms, content, and process for an expedited removal under § 235(b), in accordance with the statutory requirements.

EPO 7: Identify the removal procedures for administrative removal of: aliens entering under VWP, in accordance with § 217; crewmembers and stowaways; S-nonimmigrant visa holders; distressed aliens under § 250; and aliens inadmissible on national security grounds under § 235(c)

III. Review of the Past

1. Under what situations is an alien who is subject to removal not entitled to a removal hearing before an IJ under § 240?
 - *Aliens subject to expedited removal under INA § 235(b)*
 - *Aliens subject to administrative removal under INA § 238(b)*
 - *Aliens subject to administrative removal under INA § 217*
 - *Aliens subject to reinstatement of a previously issued removal order under INA § 241(a)(5)*
 - *Crewmembers (§ 252(b)) and stowaways (§ 235(a)(2) and 241(d))*
 - *Alien witnesses or informants holding an S-5, S-6, or S-7 nonimmigrant visa (8 CFR 236.4)*
 - *Aliens falling into distress and requesting removal at U.S. expense (§ 250)*
 - *Aliens inadmissible on national security grounds (§ 235(c))*
2. What is the Visa Waiver Program?



Allows nationals of some 38 participating countries to travel to the United States for tourism or business (visitor [B] visa purposes only) for stays of 90 days or less without obtaining a visa. If the traveler is later found to have violated the conditions of admission under the Visa Waiver Program, he does not have the right to a hearing under INA 240.

Note: "Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015" put limitations on travel if the alien traveled to Iraq, Syria, Iran, Sudan, Libya, Somalia, or Yemen, or if the alien also holds citizenship to Iraq, Syria, Iran, or Sudan.

3. What is an S-nonimmigrant?

An alien who has assisted a law enforcement agency as a witness or informant.

IV. Main Idea

Aliens found removable	Removal procedure
Expedited removal of illegal entrants within 14 days of entry, 100 miles of border	§ 235(b)
Entrants under Visa Waiver Program removable under § 237	§ 217
Alien crewmember overstay	§ 252(b)
Alien stowaway	§ 235(a)(2)
S-nonimmigrant found removable under § 237	8 CFR 236.4
Alien falling into distress	§ 250
Aliens inadmissible on national security grounds	§ 235(c)

V. Agenda

- Forms, form content, and process for an expedited removal in accordance with § 235(b)
- Removals for other situations:
 - Aliens admitted to the U.S. under the Visa Waiver Program
 - Crewmembers
 - Stowaways
 - S-nonimmigrant visa holders
 - Aliens in distress
 - Aliens inadmissible on national security grounds



INSTRUCTION

Explanation

A. EPO 7: Determine the forms, content, and process for an expedited removal under § 235(b) in accordance with the statutory requirements.

1. Aliens processed as Expedited Removal under § 235(b) must fall into one of the two categories below:

- a. An alien may be processed § 235(b) if they meet all of the following:
 - 1) Not been admitted or paroled
 - 2) Inadmissible under 212(a)(6)(C) or 212(a)(7)
 - 3) Is encountered within 100 air miles of any international land border
 - 4) Has been encountered no more than 14 days after entering the U.S.

OR

- b. An alien may be processed under § 235(b) if they are an arriving alien at any U.S. port-of-entry who lacks proper entry document or has fraudulent documents and misrepresents a material fact. (8 CFR 2.1 The term “arriving alien” means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry.)
 - 1) Must be inadmissible under § 212(a)(6)(C) or 212 (a)(7)
2. Aliens meeting the criteria for expedited removal who present themselves at a port of entry can be denied entry and sent back to the country they came from. Aliens encountered at a POE and processed under § 235(b) are usually denied entry and sent back to the country they came from by Customs and Border Protection. ERO may encounter these aliens if CBP is unable to remove them, which in many cases is due to the alien expressing fear of being removed from the U.S.
3. Aliens processed under § 235(b) who enter into ICE custody may be subject to mandatory detention.

Instructor Note: Remind students of the definition of an arriving alien – “an applicant for admission coming or attempting to come into the United States at a port-of-entry.”



4. Expedited removal process should **not** apply to aliens who are:
 - a. Lawful permanent residents
 - b. Unaccompanied juveniles
 - c. Crewmembers or stowaways
 - d. Victims of spousal abuse

Instructor Note: Also applies to members of ABC class. Students will learn more about ABC in Special Status and Forms of Relief.

Instructor Note: INA § 235(b)(1)(A)(iii)(II) defines “certain other aliens,” to which expedited removal applies as those not admitted or paroled who cannot prove that they have been in the United States continuously for the two years before. However, by policy, it is applied as outlined above.

Emphasize the importance of verifying the identity of an individual who is subject to expedited removal, as with other non-hearing removal processes.

On 1/12/2017 Secretary Johnson changed policy “wet foot/dry foot” regarding Cuban aliens. Per new policy Cuban aliens may be processed under 235(b) for expedited removal.

5. Procedures
 - a. Complete I-213 and perform record checks to establish that subject is inadmissible under § 212 (a)(6)(C) or 212 (a)(7).
 - 1) Record checks should include: CIS, TECS MOD, Arrival/Departure (SQ94), CLAIMS, NCIC, EARM, IAFIS
 - b. Interview subject, with a translator if needed, to determine if the subject has fear of being harmed if returned to country of origin or last residence.
 - 1) Interview session is conducted by one ERO Officer and witnessed by another ERO Officer.
 - 2) Record of Sworn Statement Proceedings under Section 235(b)(1), I-867A, is a sworn record of that interview.
 - 3) Jurat for Record of Sworn Statement in Proceeding Under Section 235(b)(1), I-867B, must be signed by both officers and the subject.



- a) I-867B includes the question “Do you have any fear or concern about being returned to your country or being removed from the United States?”

Instructor Note: Refer students to the I-867A and B forms in the Student Guide.

- c. Provide subject List of Free Legal Service Providers.
- d. Complete Notice and Order of Expedited Removal, I-860 identifying the specific paragraphs of § 212 – 212(a)(6)(C) or 212(a)(7) – that provide the legal justification for removal.
 - 1) The subject’s specific violations are spelled out in a narrative.
 - 2) ERO Officer signs the top portion, the Determination of Inadmissibility.
 - 3) Both an ERO Officer and a designated official must sign the lower portion Order of Removal
 - 4) ERO Officer must sign a Certificate of Service when he gives a copy of the form to the subject
- e. An alien who expresses a fear of persecution or an intention to apply for asylum is referred to a CIS asylum officer for a credible fear interview.

Instructor Note: A brief overview of asylum and withholding of removal and a portion of the I-589 used to request these forms of relief are included at the end of the Student Guide. The topic is covered in more detail in the Special Status and Forms of Relief lesson.

- 1) If the asylum officer does not find credible fear, the alien can still request the fear claim be reviewed by an IJ.
 - a) If the IJ does not find credible fear, removal under 235(b) proceeds
- 2) If the asylum officer or the IJ finds credible fear exists, the expedited removal final order will be vacated and an NTA, will need to be issued to initiate 240 removal proceedings.
- 3) Once an alien is placed into INA 240 proceedings the alien can file for asylum and the IJ can determine eligibility.

Instructor Note: On April 16, 2019, the Attorney General issued Matter of M-S-, 27 I&N Dec. 509 (A.G. 2019), holding that “[a]n alien who is transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear of



persecution or torture is ineligible for release on bond. Such an alien must be detained until his or her removal proceedings conclude, unless he or she is granted parole.” The Attorney General expressly overruled Matter of X-K-, 23 I&N Dec. 731, 736 (BIA 2005), which previously authorized immigration judges to conduct custody redetermination hearings (“bond hearings”) for inland expedited removal cases—those aliens designated under INA § 235(b)(1)(A)(iii) who are subject to expedited removal, found to have a credible fear of persecution or torture, and referred for removal proceedings pursuant to 8 C.F.R. § 208.30(f).

Instructor Note: Direct students to review the I-860 and the I-296 in the Student Guide as you explain them.

- f. Provide subject Notice to Alien Ordered Removed / Departure Verification, I-296, signed by ERO Officer
 - 1) Informs alien of restrictions imposed because of their violations – prohibition from entering U.S. legally for 5 years, 20 years, or permanently, depending on violation
 - 2) Includes photo and fingerprint of alien
 - 3) Form is signed by ERO Officer to confirm alien’s departure

B. EPO 8: Identify the removal procedures for administrative removal of: aliens entering under VWP, in accordance with § 217; crewmembers and stowaways; S-nonimmigrant visa holders; distressed aliens under § 250; and aliens inadmissible on national security grounds under § 235(c).

- 1. Administrative removal under INA § 217 (per policy 11070.1, Feb. 18, 2016)
 - a. Aliens who enter under the Visa Waiver Program (VWP) waive their right to a hearing.
 - 1) Program allows aliens from certain countries (see Immigration Law Pocket Field Guide) to enter as a visitor, without a visa, for stays of 90 days or less
 - 2) Waiver included in ESTA application and on I-94W
 - a) ESTA (Electronic System for Travel Authorization) records aliens entering under VWP at most airports and seaports
 - b) Waiver appears on the back of Arrival/Departure Record, Form I-94W.



- b. Subject must be found removable under INA § 237.

Instructor Note: Explain that although the lesson provides an overview of the forms for removals under § 217, students will not be tested on those form names or numbers for processing under § 217. Instructions for completing the forms are on the ICE intranet.

Students will need to know, just like any other type of removal, to remove an under § 217 ICE will need to have a removal order issued and signed before the alien is removed.

- c. § 217 administrative removal procedure:

- 1) Confirm alienage and immigration status
 - a) Do not use § 217 process for asylees, refugees, LPRs, or anyone with a pending application to adjust to LPR status
- 2) Complete I-213 and I-200
- 3) VWP Notice of Intent to Issue Final Administrative Removal Order (NOI) (71-058)
 - a) Signed by issuing officer. Alien is considered to have a final order of removal after signature and service.
 - b) Serving officer signs and notifies alien that he/she has 48 hours to respond to charges
 - c) If alien contests removability with request of asylum, withholding of removal, or protection under DCAT, refer to an IJ for an asylum, withholding or DCAT hearing for a fear review only.
 - (1) VWP entrant who applies for asylum may be taken into ICE custody, pending an asylum hearing
 - d) If alien contests removal on other grounds, serving officer must investigate and complete written report
 - e) If alien refuses to sign NOI, witnessing officer must sign
- 4) Record of Proceedings (ROP) created and should be reviewed by OCC for legal sufficiency



- a) Include ROP Visa Waiver Removal Checklist (71-059) and Certification of Authenticity of ROP (71-057) signed by district director (FOD or designee)
 - b) ROP, checklist, cover sheet added to left side of A-File
 - 5) VWP Final Administrative Removal Order (71-060)
 - a) Signed by district director (FOD) or designee (per 8 CFR 1.2) – deciding official must not be the same person who issued NOI
 - b) Served by serving officer; witnessing officer signs if alien refuses
 - c) Deciding official must sign and alien must be served before removal order is final and alien can be removed.
 - 6) VWP Notice to Alien Ordered Removed / Departure Verification (71-061)
 - a) 10-year bar for removal under § 217
 - b) 20-year bar for reinstatement or permanent bar for removal for aggravated felony
2. Removal of alien crewmember, under § 252(b)
- a. Alien crewmembers are given a D nonimmigrant visa and granted conditional landing permit (I-95, not admitted) for up to 29 days upon arrival in the U.S. If ERO Officer determines that crewmember is unlikely to depart in that time, the crewmember's permit may be revoked using I-99.
 - b. Crewmember may be taken into custody by ICE.
 - a) Transport company that brought alien must cover cost of detention and repatriation.
 - b) No removal charge is used.
 - c. Crewmember who applies for asylum may be taken into ICE custody, pending an asylum hearing.
 - d. An alien crewmember who was granted landing privileges on or after April 1, 1997, and who has not departed the U.S. shall be removed without a hearing – 8 CFR § 252.2(b).



- 1) Local forms are used, according to field office policy.
 - 2) Alien is served with I-296 with a 10-year bar
- e. An alien crewmember who was granted landing privileges prior to April 1, 1997, and has not departed is subject to 240 removal proceedings as deportable under 237(a)(1)(C)(i). See 8 CFR § 252.2(b).

Student Note: INA 252(b) removals apply to aliens granted temporary landing under the D nonimmigrant visa and not necessarily to those who were admitted. Aliens in Transit (C-1 nonimmigrants) or Business (B-1 nonimmigrants) can come as crewmembers, but since those aliens are admitted under those visa classifications, 252(b) may not apply. Consult with OCC before processing anyone admitted as a crewmember for removal under 252(b).

Instructor Note: See unpublished BIA decision *Rehman Saidur* (February 2, 2005) for information on admitted crewmen processing.

3. Removal of alien stowaway under § 235(a)(2)
 - a. An alien who arrives as a stowaway is inadmissible under INA 212(a)(6)(D).
 - b. May be taken into custody and ordered removed by ERO Designated Official.
 - 1) Not eligible for hearing
 - 2) Alien is given I-296 with 10-year bar on reentry to the U.S.
 - c. If stowaway cannot or will not provide information on transportation company, removal order must be signed by FOD, citing § 235(a)(2).
 - d. Stowaway who applies for asylum may be taken into ICE custody, pending an asylum hearing.
 - e. Stowaways who arrived prior to April 1, 1997, must be issued an NTA and processed under INA 240.
4. Removal of holders of an S-nonimmigrant visa
 - a. Alien who has agreed to provide information pertinent to a criminal investigation or national security
 - b. FOD may determine that alien is removable under one or more grounds under § 237(a) that either occurred subsequent to the alien's entry or was not disclosed prior to the alien's classification under the S visa.



- c. Removal must be authorized by Secretary of Homeland Security with concurrence of Assistant Attorney General.
- d. May apply for asylum

Instructor Note: The number of S visas issued annually is limited and the situation is rarely seen in most field offices. Three categories of S visas with the following annual numerical limits: S-5 100 visas issued per year, S-6 50 visas issued per year, and S-7 family of S-5 or S-6 has no numerical limits.

5. Alien in distress – removal under § 250

- a. Aliens who are “in distress” or receiving public assistance who request to be repatriated but cannot afford to do so on their own may be returned at the expense of the U.S. government. Must be approved by FOD.

Instructor Note: Removal under 250 forms used are I-243 Application for Removal and I-202 Authorization for Removal. This is a very rarely used in the field and is not a focus of this course.

6. Removal of aliens inadmissible on security and related grounds

- a. A special process exists for arriving aliens removable under INA § 235(c) where the alien is suspected of being inadmissible under INA § 212(a)(3)(A)(i)(I) or (A)(iii)(security related grounds). 8 CFR 235.8.
- b. If you have cases processed under INA § 235(c), consult OPLA, National Security Law Division

Instructor Note: Removal under 235(c) see Guidance Relating to INA § 235(c): Removal of Aliens on Security and Related Grounds, March 14, 2007.

Alien served with Notice of Temporary Inadmissibility, I-147 (typically by CBP), and given 15 days to respond. Director of ICE may curtail 15-day period. Director of ICE may order alien removed without a hearing if: Alien is considered to be inadmissible under 212(a)(3), and after consulting appropriate security agencies, Director of ICE determines that disclosure of information would be prejudicial to the public interest, or, Director of ICE may direct further inquiry or refer the case for an IJ hearing



II. Demonstration

You talk to Julia Marquez-Garcia, a Mexican citizen who is serving a three-day sentence for public lewdness and is coming up on her release date tomorrow.

Subject information

Name:	Julia Marquez-Garcia
Date of Birth:	May 4, 1954
Place of Birth:	Tuxpan, Mexico
Mother's Name:	Maria Garcia
Mother's DOB:	February 14, 1929
Mother's Place of Birth:	Torreon, Mexico
Father's Name:	Howard Marquez-Cruz
Father's DOB:	March 16, 1932
Father's Place of Birth:	La Paz, Mexico
Date Subject Entered United States:	9 days ago
Location Subject Entered United States:	1 mile east of Presidio, TX, POE
Reason for coming to the United States:	To shop
Status at entry:	Illegal/swam the river
Reason for arrest:	Conviction for Public Lewdness
Address in United States:	None
Citizenship:	Mexico

When you interview the subject, she states she entered the United States nine days ago by swimming the river near a border town. She claims she came to the U.S. and started working as a dancer at topless bar. She was arrested in an undercover operation by the same border town local law enforcement agency.

1. Is Marquez-Garcia amenable to removal? If so, under what section of law? What, if any, is the most efficient section of the INA to remove this subject?

Inadmissible under § 212(a)(7)(A)(i)(1) – Immigrant without Documents

2. What statements must be taken from the subject and how are they documented?
 - *I-867A: Record of Sworn Statement Proceedings under Section 235(b)(1) is a sworn record of interview conducted by an officer and witnessed by another.*
 - *I-867B: Jurat for Record of Sworn Statement in Proceeding Under Section 235(b)(1) is signed by both officers and the subject.*



3. Is any relief available to the alien in expedited removal proceedings?

Alien may petition for asylum

4. What order of removal is given to the alien, and is there any future bar to admission?

*Bar may be 5, 10, or 20 years, or permanent, depending on offense.
Indicate on the I-860: Notice and Order of Expedited Removal and I-296:
Notice to Alien Ordered Removed/Departure Verification.*

Under what provisions might, or might not, each of the following be removable?

Two years ago, **Dora Ramirez** came to the United States as an au pair (J-1) to work for a family with two children. One of the parents lost his job, and they informed Dora they no longer needed her. The family then moved out of the area, owing Dora six months' salary and leaving her to fend for herself. She has been ill, in and out of the county hospital, and then living in a shelter. She wants to return to Honduras but does not have the funds to do so.

May be subject to § 250 with FOD approval.

Puti Ramotoswo was encountered by an ERO Officer at the county jail. He had been arrested for loitering and in an interview says he arrived in the United States 10 days ago after hiding on a Liberian freighter. He is terrified of being returned to Liberia because his family has long opposed the ruling party there. Is he amenable to removal from the United States? If so, under what section of law?

He is removable as a stowaway, and the company owning the freighter on which he made the trip is liable for the cost of his removal. But if he claims asylum, he is subject to mandatory detention and will be interviewed by an asylum officer. If he claims asylum, ICE may not mention to the Liberian Consulate that he has applied for asylum.

Gavin Longbottom, a citizen of the UK, claims he entered the United States a year ago to visit friends in Washington, DC. He was approved through the ESTA process, presented a valid passport, and was granted admission under the Visa Waiver Program. About a month after he arrived he started picking up casual work as a carpenter. He found his skills were in demand and clients were happy to pay him in cash. Last month he was arrested on a drunk and disorderly charge. Is he amenable to removal from the U.S.? If so, under what section of law?

He can be removed without a hearing under § 217 because he overstayed his 90-day permission to enter the United States without a visa on the Visa Waiver Program.



III. Student Practice

Estaban Montoya was encountered by CBP at the POE trying to enter the U.S. with forged documents that he had bought on the street in Mexico City. No criminal record or previous immigration encounters turned up in database searches.

1. Is Montoya amenable to removal from the United States? If so, under what section of law is the most efficient section of the INA to remove this subject?

Yes. Amenable to expedited removal under 235(b) (Inadmissible under § 212(a)(6)(C)(i) – fraud or misrepresentation)

2. What statements must be taken from the subject and how are they documented?

- *I-867A: Record of Sworn Statement Proceedings under Section 235(b)(1)*
- *I-867B: Jurat for Record of Sworn Statement in Proceeding Under Section 235(b)(1)*
- *I-860: Notice and Order of Expedited Removal*
- *I-296: Notice to Alien Ordered Removed/Departure Verification.*

3. Is any relief available to the alien in expedited removal proceedings?

Alien may petition for asylum

4. What order of removal is given to the alien, and is there any future bar to admission?

I-860: Notice and Order of Expedited Removal and I-296: Notice to Alien Ordered Removed/Departure Verification. Bar may be 5, 10, or 20 years, or permanent, depending on offense.

After reviewing the questions and answers above direct students to complete paper copies of the I-860 and I-296 on Montoya.

IV. Feedback and Remediation

Review the answers to the questions. Provide explanations for correct and incorrect answers.



CONCLUSION

I. Summary of Main Ideas

Although the basic process for removal may begin with the issuance of an NTA and provide for a hearing before an IJ, many aliens encountered through contact with an LEA are subject to a non-hearing removal process – reinstatement of a previously issued order of removal; administrative removal of an aggravated felon under § 238(b), expedited removal under § 235(b), or other removal.

This lesson introduced the various forms and procedures that apply to each of these types of cases.

II. Integration

Aliens subject to removal orders may be detained and transported to an ICE detention facility or may be released on recognizance or bond with or without various restrictions. Many aliens subject to removal are eligible for voluntary departure – leaving the United States voluntarily without the bars to reentry associated with a removal order. The forms and procedures for these cases is covered in subsequent lessons.

Although this lesson focused on the paper version of the forms used with each case, the information for these forms will be captured using EAGLE, EADM, and EARM. However, in reviewing an A-File, you will have in front of you the printouts with original signatures.

III. Objectives

Segment 1

- EPO 1: Outline the overall sequence of removal proceedings under § 240..
- EPO 2: Determine the forms, content, and process for a removal under § 240 in accordance with the statutory requirements.
- EPO 3: Recognize which aliens are ineligible for voluntary departure and identify the consequences and actions associated with an alien failing to comply with the provisions of a Voluntary Departure order and the forms associated with a Voluntary Departure order.
- EPO 4: Distinguish between those aliens who are and are not entitled to a removal hearing.

Segment 2

- EPO 5: Determine the forms, content, and process for reinstatement of a prior order of removal under § 241(a)(5) in accordance with statutory requirements.



Segment 3

EPO 6: Determine the forms, content, and process for an administrative removal under § 238(b) in accordance with the statutory requirements..

Segment 4

EPO 7: Determine the forms, content, and process for an expedited removal under § 235(b) in accordance with the statutory requirements.

EPO 8: Identify the removal procedures for administrative removal of: aliens entering under VWP, in accordance with § 217; crewmembers and stowaways; S-nonimmigrant visa holders; distressed aliens under § 250; and aliens inadmissible on national security grounds under § 235(c).

IV. Test or Final Activity

The students will be assessed on the Case Disposition multiple-choice exam and Encounter to Detention PE.

Students are given a copy of the Case Disposition Practice Test, which covers several lessons. They should work through these questions prior to the Case Disposition Review. The instructor will explain the answers to the questions at that session.



Attachments

Forms are included in the Student Guide at the end of each segment. They are also provided as a separate packet so that students may refer to them during explanation and demonstration. Because students may use the forms packet as a go-by for the process to follow, some forms are duplicated between segments.

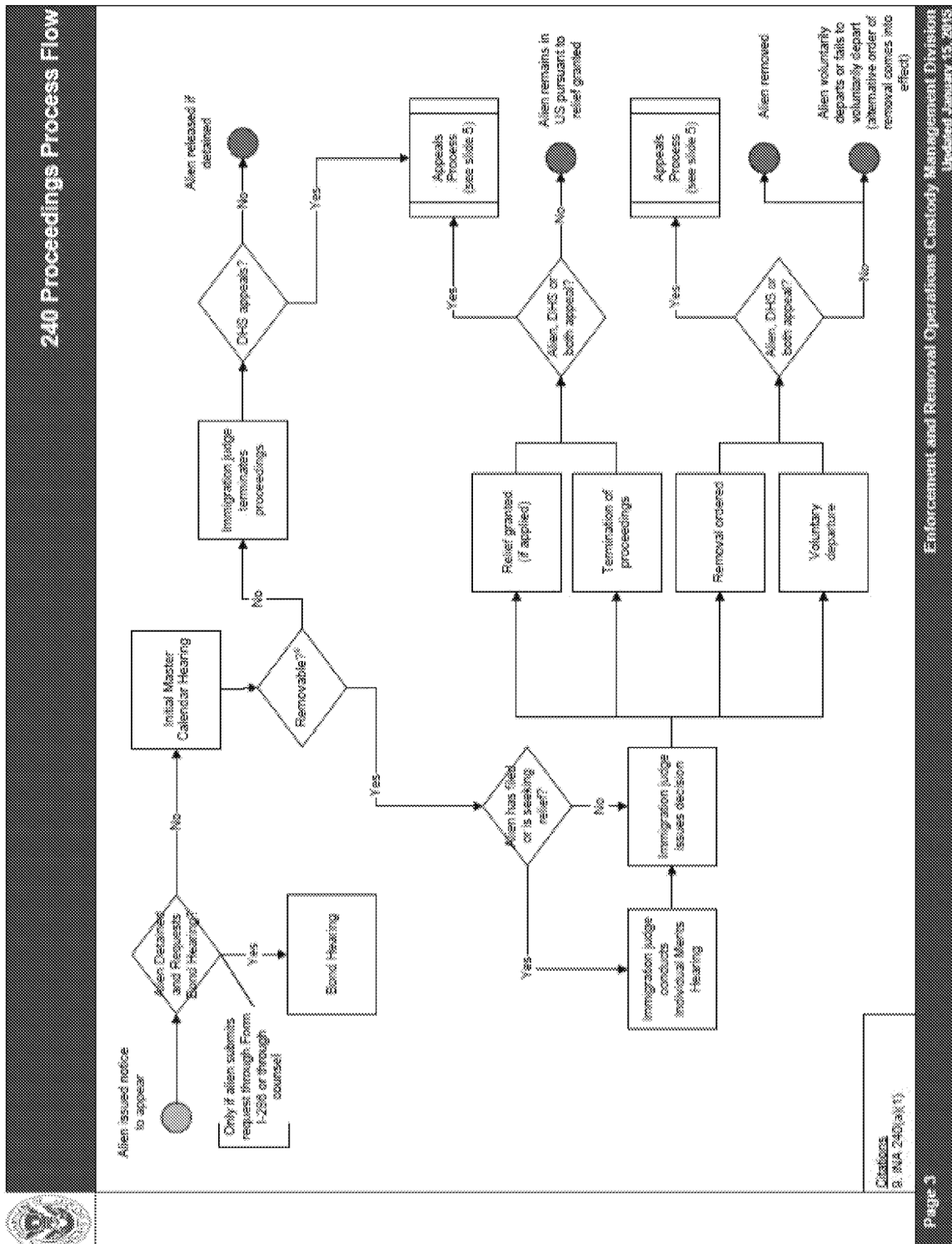
- Handouts Segment 1: § 240 Removal Process
 - Flowchart illustrating § 240 process
 - When a Removal Order Becomes Administratively Final
 - I-213 Record of Deportable/Inadmissible Alien
 - I-862 Notice to Appear
 - I-826 Notice of Rights and Request for Disposition
 - I-200 Warrant of Arrest of Alien
 - I-265 Notice to Appear/Bond and Custody Processing Worksheet
 - I-286 Notice of Custody Determination
 - I-205 Warrant of Removal/Deportation Sample
 - I-205 Sample Completed for Fara
 - I-294 Warning to Alien Ordered Removed or Deported
 - I-210 Voluntary Departure and Verification of Departure
- Handouts Segment 2: Reinstatement under § 241(a)(5)
 - Flowchart illustrating Reinstatement Process
 - I-215B Record of Sworn Statement in Affidavit Form
 - I-214 Warning as to Rights – Interview Log
 - I-877 Record of Sworn Statement in Administrative Proceedings]
 - I-871 Notice of Intent/Decision to Reinstate Prior Order
 - I-213 Record of Deportable/Inadmissible Alien
 - Previously executed I-205 Warrant of Removal/Deportation
 - Previously executed I-294 Warning to Alien Ordered Removed or Deported [or I-296 Notice to Alien Ordered Removed/Departure Verification]
 - I-205 Warrant of Removal/Deportation
 - I-294 Warning to Alien Ordered Removed or Deported
 - Index of Record of Proceedings for Reinstatement
 - ROP Certification
 - EAGLE Screen Shots on Reinstatement
- Handouts Segment 3: Administrative Removal under § 238(b)
 - Flowchart illustrating Administrative Removal process
 - I-200 Warrant of Arrest
 - I-213 Record of Deportable/Inadmissible Alien
 - Certified Conviction Documents
 - I-265 Notice to Appear/Bond and Custody Processing Worksheet
 - I-215B Record of Sworn Statement in Affidavit Form
 - I-877 Record of Sworn Statement in Administrative Proceedings
 - Index of Record of Proceedings for Administrative Removal
 - ROP Certification
 - I-851 Notice of Intent (NOI) to Issue a Final Administrative Removal Order
 - I-851A Final Administrative Removal Order
 - I-205 Warrant of Removal



- I-294 Warning to Alien Removed or Deported
- Handouts Segment 4: Other Removals
 - I-867A Record of Sworn Statement Proceedings under Section 235(b)(1)
 - I-867B Jurat for Record of Sworn Statement in Proceeding Under Section 235(b)(1)
 - I-860 Notice and Order of Expedited Removal
 - I-296 Notice to Alien Ordered Removed/Departure Verification
 - 71-058 Notice of Intent to Issue a Final Administrative Removal Order
 - 71-059 Record of Proceeding Visa Waiver Removal – Checklist
 - 71-057 Certification of Authenticity of the Records of Proceedings
 - 71-060 VWP Final Administrative Removal Order
 - 71-061 VWP Notice to Alien Ordered Removed/Departure Verification
 - I-589, Application for Asylum and for Withholding of Removal
[sample of form and overview]



Attachments





When a Removal Order Becomes Administratively Final

Type of Order	Removal Order Becomes Administratively Final	Check Before Removal
IJ orders removal <i>in absentia</i>	Date of IJ order	No Motion to Reopen (MTR) or Motion to Rescind the <i>in absentia</i> order has been filed (automatic stay)
IJ orders removal and alien waives appeal	Date of IJ order	IJ order indicates that appeal has been waived
IJ orders removal and alien reserves appeal but does not file timely	30 days after IJ's decision	No appeal has been filed
IJ orders removal, alien appeals, and BIA dismisses appeal	Date of BIA decision	No petition for review (PFR) has been filed with the Circuit Court of Appeals (discretionary stay)
IJ grants voluntary departure (VD), alien waives appeal and overstates VD period	Day after end of VD period	Alien has not departed or appealed; alien has not filed MTR
IJ grants VD and requires a VD bond, alien waives appeal, and alien fails to post bond within 5 days	6 days after IJ's order	Alien has not departed; alien has not, in fact, filed an appeal; alien has not filed an MTR <i>Alien who waives appeal may still file an appeal on grounds that the waiver was not valid; when an alien has filed an appeal, the order of removal does not become final until the BIA has dismissed the appeal.</i>
IJ grants VD, alien appeals, BIA dismissed appeal without reinstating VD	Date of BIA decision	No PFR has been filed.
IJ grants VD, alien appeals, BIA reinstates VD, and alien overstates VD period	Day after end of VD period	Alien has not filed an MTR or PFR; alien has not departed <i>Filing a PFR will automatically terminate the grant of VD and it may result in a stay of removal.</i>

Family Name (CAPS)		First	Middle	Sex	Hair	Eyes	Complexion	
Country of Citizenship		Passport Number and Country of Issue		File Number		Height	Weight	Occupation
U.S. Address				Scars and Marks				
Date, Place, Time, and Manner of Last Entry				Passenger Boarded at		F.B.I. Number		☐ Single ☐ Divorced ☐ Married ☐ Widower ☐ Separated
Number, Street, City, Province (State) and Country of Permanent Residence				Method of Location/Apprehension				
Date of Birth		Date of Action	Location Code	At/Near		Date/Hour		
City, Province (State) and Country of Birth		AR	Form: (Type and No.) Lifted ☐ Not Lifted ☐	By				
NIV Issuing Post and NIV Number		Social Security Account Name		Status at Entry		Status When Found		
Date Visa Issued		Social Security Number		Length of Time Illegally in U.S.				
Immigration Record				Criminal Record				
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)				Number and Nationality of Minor Children				
Father's Name, Nationality, and Address, if Known				Mother's Present and Maiden Names, Nationality, and Address, if Known				
Name and Address of (Last/Current) U.S. Employer		Type of Employment		Salary		Employed from/to		
						Hr		
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)								
Alien has been advised of communication privileges				(Date/Initials) _____ (Signature and Title of Immigration Officer) _____				
Distribution:		Received: (Subject and Documents) (Report of Interview)						
		Officer: _____						
		on: _____ (time)						
		Disposition: _____						
		Examining Officer: _____						

In removal proceedings under section 240 of the Immigration and Nationality Act:

File No:

In the Matter of:

Respondent: ----- currently residing at:

(Number, street, city and ZIP code)

(Area code and phone number)

☒ 1. You are an arriving alien.☐ 2. You are an alien present in the United States who has not been admitted or paroled.☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

☒ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.☐ Section 235(b)(1) order was vacated pursuant to: ☒ 8CFR 208.30(f)(2) ☒ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

(Complete Address of Immigration Court, including Room Number, if any)

on _____ at _____ to show why you should not be removed from the United States based on the
(Date) (Time)

charge(s) set forth above.

(Signature and Title of Issuing Office,)

Date: _____

(City and State)

See reverse for important information

2025-ICLI-00045 0082

Form I-862 (Rev. 08/01/07)

REL0000175993

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at <http://www.ice.gov/about/dro/contact.htm>. You must surrender within 30 days from the date the order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before:

(Signature of Respondent)

Date: _____

(Signature and Title of Immigration Office,)

Certificate of Service

This Notice To Appear was served on the respondent by me on _____, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

☐ in person ☐ by certified mail, returned receipt requested ☐ by regular mail

☐ Attached is a credible fear worksheet.

☐ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

(Signature of Respondent if Personally Served)

(Signature and Title of officer)

DEPARTMENT OF HOMELAND SECURITY
NOTICE OF RIGHTS AND REQUEST FOR DISPOSITION

Name: _____ File No: _____

NOTICE OF RIGHTS AND ADVISALS

You have been arrested because immigration officers believe that you are illegally in the United States. You have the right to a hearing before the Immigration Court to determine whether you may remain in the United States. If you request a hearing before a judge in Immigration Court, you may be detained, or you may be eligible to be released from detention, either with or without payment of bond.

You have the right to contact an attorney or other legal representative to represent you at your hearings, or to answer any questions regarding your legal rights in the United States. The officer who gave you this notice will provide you with a list of legal organizations that may represent you for free or for a small fee. You have the right to communicate with the consular or diplomatic officers from your country. You may use a telephone to call a lawyer, other legal representative, or consular officer at any time prior to your departure from the United States.

In the alternative, you may request to return to your country as soon as possible, without a hearing. If you choose to return to your country, you may lose the opportunity to apply for certain immigration benefits or forms of relief from removal that are only available to people present within the United States. If you choose to return to your country, you may change your mind and instead request a hearing before a judge in Immigration Court at any time before your departure from the United States. You should let an immigration officer know immediately if you change your mind.

If you have been in the United States without legal status for one year or more and choose to return to your country, you will be unable to legally return to the United States for ten years, unless you obtain a waiver. If you have been in the United States without legal status for more than 180 days but for less than one year and choose to return to your country, you will be unable to legally return to the United States for three years, unless you obtain a waiver. You may apply for a waiver only if you have a spouse or parent who is a U.S. citizen or lawful permanent resident.

REQUEST FOR DISPOSITION

____ I request a hearing before the Immigration Court to determine whether I may remain in the United States.
Initials

____ I believe I face harm if I return to my country. My case will be referred to the Immigration Court for a hearing.
Initials

____ I admit that I am illegally in the United States, and I do not believe that I face harm if I return to my country.
Initials I give up my right to a hearing before the Immigration Court. I wish to return to my country as soon as arrangements can be made to effect my departure. I understand that I may be held in detention until my departure.

Signature of Subject

Date

CERTIFICATION OF SERVICE

D Notice read by subject.

D Notice read to subject by _____, in the _____ language.

Name of Officer (Print)

Name of Interpreter (Print)

Signature of Officer

Date and Time of Service

DEPARTMENT OF HOMELAND SECURITY
NOTIFICACION DE DERECHOS Y SOLICITUD DE RESOLUCION

Nombre: _____ Expediente No: _____

AVISO DE DERECHOS Y NOTIFICACIONES

Usted ha sido arrestado(a) porque los oficiales de inmigración creen que usted esta en los Estados Unidos ilegalmente. Usted tiene el derecho a una audiencia ante la corte de inmigración para que se determine si puede permanecer en los Estados Unidos. Si usted pide una audiencia ante un juez de inmigración, podrá permanecer detenido(a) o podrá ser elegible para salir de la detención, ya sea con o sin el pago de una fianza.

Usted tiene el derecho de contactar a un abogado de inmigración u otro representante legal para que lo represente en sus audiencias, o para que le conteste cualquier pregunta concerniente a sus derechos legales en los Estados Unidos. El oficial que le ha dado esta notificación le proveera una lista de servicios legales que podrán representarlo(a) de gratis o a bajo costo. Usted tiene el derecho de comunicarse con los oficiales consulares o diplomaticos de su país. Usted puede utilizar el telefono para llamar a un abogado, otro representante legal o al oficial consular en cualquier momento antes de su salida de los Estados Unidos.

Como alternativa, usted puede pedir que lo devuelvan a su país lo mas pronto posible, sin una audiencia. Si elige regresar a su país, usted podría perder la oportunidad de solicitar ciertos beneficios de inmigración o formas de prevenir la remoción que solamente estan disponibles para las personas presentes en los Estados Unidos. Si elige regresar a su país, usted puede cambiar de idea y pedir una audiencia ante un juez en la corte de inmigración en cualquier momento antes de su salida de los Estados Unidos. Usted debe notificar inmediatamente a un oficial de inmigración si cambia de idea.

Si usted ha estado en los Estados Unidos sin estatus legal por un año o mas y elige regresar a su país, usted no podrá regresar a los Estados Unidos legalmente por diez años, a no ser que obtenga una dispensa. Si usted ha estado en los Estados Unidos sin estatus legal por mas de 180 días pero por menos de un año y elige regresar a su país, usted no podrá regresar a los Estados Unidos legalmente por tres años, a no ser que obtenga una dispensa. Usted puede solicitar una dispensa solamente si tiene un conyugue o un padre que es ciudadano o residente permanente legal de los Estados Unidos.

SOLICITUD DE RESOLUCION

Solicito una audiencia ante la corte de inmigración que resuelva si puedo o no permanecer en los Estados Unidos.
Iniciales _____

Considero que estaria en peligro si regreso a mi país. Mi caso se trasladara a la corte de inmigración para la celebración de una audiencia.
Iniciales _____

----- Admito que estoy ilegalmente en los Estados Unidos, y no considero que estaria en peligro si regreso a mi país. Renuncio a mi derecho a una audiencia ante la corte de inmigración. Deseo regresar a mi país en cuanto se pueda disponer mi salida. Entiendo que pudiera permanecer detenido hasta mi salida.
Iniciales _____

Firma del Sujeto

Fecha

CERTIFICATION OF SERVICE

D Notice read by subject.

D Notice read to subject by _____, in the _____ language.

Name of Immigration Officer (Print)

Name of Interpreter (Print)

Signature of Officer

Date and Time of Service

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

- ☐ the execution of a charging document to initiate removal proceedings against the subject;
- ☐ the pendency of ongoing removal proceedings against the subject;
- ☐ the failure to establish admissibility subsequent to deferred inspection;
- ☐ biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- ☐ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____
(Location)

on _____ on _____, and the contents of this
(Name of Alien) (Date of Service)

notice were read to him or her in the _____ language.
(Language)

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

A. Alien's Name Date of birth	File No.	Date of processing
Address		
Factual Allegations (attach separate sheet if necessary): D Charged under section 212 as inadmissible D Charge<1 under section 237 as deportable D Attorney of Record?		
Supporting Evidence		
B. ADDITIONAL FACTORS TO BE CONSIDERED FOR BOND/CUSTODY DETERMINATION		
1. Is a petition or application pending for this alien or a family member? (Explain)		
2. Total times apprehended		
Bonded before? __ Bond breached? __	How many times? __ How many times?	Released O/R before? Complied with terms of O/R? _____
3. Present health of subject, spouse and children (Explain if other than good)		
4. Total time in U.S., dates and location; residing with (Family members or others)		
5. Personal property in U.S. (Liquid and non-liquid assets)		
6. Family members in U.S. (Spouse, children, immediate relatives) address if different than subject's		
7. Employment history: (Other than current)		
8. Other factors (i.e. false claim, attempted flight, unsupervised children at home, etc.)		
C. The undersigned recommends: 0 VD without NTA 0 NTA Charges (Code) _____		
Signature and title of officer		
D. Approved as to legal sufficiency: Date: _____ Office: _____		
Signature and title of Service counsel:		

E. Based on the above information I have set the following bond: \$ _____ **Date:** _____ **Office:** _____

Signature and title of authorizing official: _____

DEPARTMENT OF HOMELAND SECURITY
NOTICE OF CUSTODY DETERMINATION

Alien's Name: _____

A-File Number: _____

Date: _____

Event ID: _____

Subject ID: _____

Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, pending a final administrative determination in your case, you will be:

☒ **D** Detained by the Department of Homeland Security.

☐ Released (check all that apply):

☐ **D** Under bond in the amount of \$ _____

☐ **D** On your own recognizance.

☐ **D** Under other conditions. [Additional document(s) will be provided.]

Name and Signature of Authorized Officer

Date and Time of Custody Determination

Title

Office Location/Address

You may request a review of this custody determination by an immigration judge.

☒ **D** I acknowledge receipt of this notification, and

☐ **D** I **do** request an immigration judge review of this custody determination.

☐ **D** I **do not** request an immigration judge review of this custody determination.

Signature of Alien

Date

The contents of this notice were read to _____ in the _____ language.
(Name of Alien) (Name of Language)

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

Title

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement
WARRANT OF REMOVAL/DEPORTATION

File No:

Date: _____

To any immigration officer of the United States Department of Homeland Security:

(Full name of alien)

who entered the United States at _____ on _____
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☐ an immigration judge in exclusion, deportation, or removal proceedings
- ☐ a designated official
- ☐ the Board of Immigration Appeals
- ☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

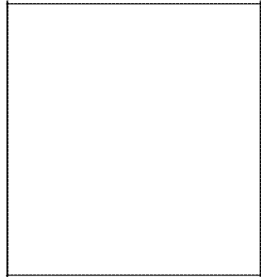
(Signature of immigration officer)

(Title of immigration officer)

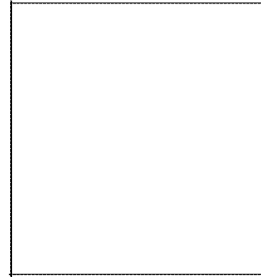
(Date and office location)

To be completed by immigration officer executing the warrant: Name of alien being removed:

Port, date, and manner of removal:



Photograph of alien removed



Right index fingerprint of alien removed

(Signature of alien being fingerprinted)

(Signature and title of immigration officer taking print)

Departure witnessed by:

(Signature and title of immigration officer)

If actual departure is not witnessed, fully identify source or means of verification of departure:

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here. **D**

Departure Verified by:

(Signature and title of immigration officer)

File No:

Date: October 20, 11

To any officer of the United States Immigration and Naturalization Service:

(b)(6),(b)(7)(C)

(Full name of alien)

aka:

who entered the United States at Unknown on 25JAN2002
(Port of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☒ 181 an immigration judge in exclusion, deportation or removal proceedings
- ☒ D a district director or a district director's designated official
- ☐ the Board of Immigration Appeals
- ☐ 0 a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

Section 212(a)(6)(A)(i) of the INA.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

Transportation company which brought him to the United States, if practicable; otherwise at the expense of the appropriations, "Salaries and Expenses, Immigration and Naturalization Service, 2006" including the expense of an attendant if necessary.

(Signature of INS official)

Assistant Field Office Director

(Title of INS official)

(Date and office location)

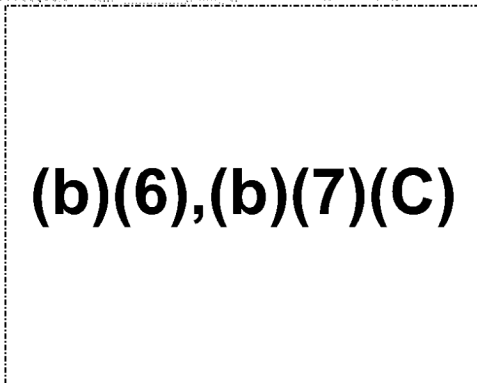
RETURN EXECUTED I-205 TO:

Immigration and Customs Enforcement
1010 East
Oakdale

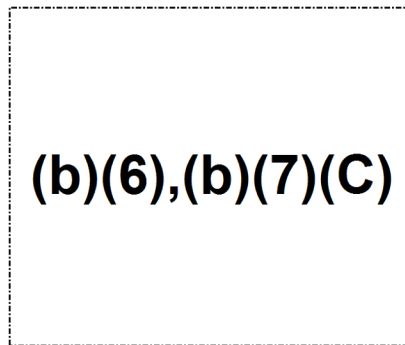
To be completed by Service officer executing the warrant:

Name of alien being removed:

Port, date, and manner of removal: f--/L c)l--tJ SJ/-tY -- VstS JD-. D- lthvT :u,co



Photograph of alien removed



Right index: fingerprint of alien removed

(b)(6),(b)(7)(C)

(Signature of alien being fingerprinted)

(b)(6),(b)(7)(C) DEA

(Print)

Departure witnessed by:

(b)(6),(b)(7)(C)

DEA

If actual departure is not witnessed, fully identify source or means of verification of departure:

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here.

☐

Departure Verified by:

(Signature and title of INS official)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

WARNING TO ALIEN ORDERED REMOVED OR DEPORTED

A-File Number: _____

Date: _____

Alien's name: _____

In accordance with the provisions of section 212(a)(9) of the Immigration and Nationality Act (Act), you are prohibited from entering, attempting to enter, or being in the United States:

D For a period of 5 years from the date of your departure from the United States because you have been found deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act initiated upon your arrival in the United States as a returning lawful permanent resident.

D For a period of 10 years from the date of your departure from the United States because you have been found:

D deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.

D inadmissible under section 212 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act initiated as a result of your having been present in the United States without admission or parole.

D deportable under section 241 of the Act and ordered deported from the United States by an immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act.

D deportable under section 237 of the Act and ordered removed from the United States in accordance with section 238 of the Act by a judge of a United States district court, or a magistrate of a United States magistrate court.

D For a period of 20 years from the date of your departure from the United States because, after having been previously excluded, deported, or removed from the United States, you have been found:

D inadmissible under section 212 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.

D deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.

D deportable under section 237 of the Act and ordered removed from the United States in proceedings under section 238 of the Act.

D deportable under section 241 of the Act and ordered deported from the United States by an immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act.

D to have reentered the United States illegally and have had the prior order reinstated under section 241(a)(5) of the Act.

D At any time because you have been found inadmissible or excludable under section 212 of the Act, or deportable under section 241 or 237 of the Act, and ordered deported or removed from the United States, and you have been convicted of a crime designated as an aggravated felony, as defined under section 101(a)(43) of the Act.

After your removal has been effected you must request and obtain permission from the Secretary of Homeland Security to reapply for admission to the United States during the period indicated. You must obtain such permission before commencing your travel to the United States. Application forms for requesting permission to reapply for admission may be obtained by contacting any United States Consulate or U.S. Department of Homeland Security office. Refer to the above file number when requesting forms or information.

WARNING FOR ALL REMOVED ALIENS: It is a crime under Title 18 United States Code, Section 1326, for an alien who has been removed from the United States to enter, attempt to enter, or be found in the United States without the Secretary of Homeland Security's express consent. Depending on the circumstances of the removal, conviction for this crime can result in imprisonment of a period of from 2 to 20 years and/or a fine up to \$250,000.00.

SPECIAL NOTICE FOR SEX OFFENDERS: Federal Law requires a convicted sex offender, including an alien who has been removed from or otherwise departed the United States and subsequently returns, to register in each jurisdiction in the United States in which he or she resides, is employed, or is a student. Violation of this requirement can result in prosecution and imprisonment for up to 10 years under Title 18 United States Code, Section 2250.

(Signature of officer serving warning)

(Title of officer)

(Location of OHS office)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

VOLUNTARY DEPARTURE AND VERIFICATION OF DEPARTURE

To: (Alien's Last Name, First Name, Address)	Alien's Phone Number	A: Number
		FIN Number

☒ You have violated the terms of your admission as a nonimmigrant. Consequently, the permission previously granted you to remain in the United States is rescinded. You are required to depart from the United States at your own expense on or before _____

☐ On _____ you were granted voluntary departure by the ☐ IJ ☐ BIA ☐ OHS. You are required to depart from the United States on or before _____. ☒ At your expense. ☐ At government expense. ☐ Under safeguard.

☒ Your request for an extension of time to depart from the United States has been _____. You are required to depart on or before _____ (Granted/Denied)

☒ You state that you will be departing the United States on _____ through _____ (Port of Departure)
on _____
(Give Airlines, Flight Number and Time or Other Manner of Departure)

NOTICE: The Immigration Judge's Alternate Order of Removal will take effect if the alien does not depart within the time specified. Failure to depart on or before the specified date may result in the withdrawal of voluntary departure and action being taken to effect your removal. A warrant for your arrest will be issued if this office has not received verification of your departure by the specified date. Failure to depart on or before the specified date may also subject you to a possible civil penalty of not less than \$1,000 and not more than \$5,000, and render you ineligible for a period of 10 years for any further authorization for voluntary departure or for relief under sections 240A, 245, 248, and 249 of the Immigration and Nationality Act.

Additionally, if an Immigration Bond has been posted on the alien, the OHS will initiate the appropriate action in accordance with the terms of the executed bond and any attached rider or riders specified.

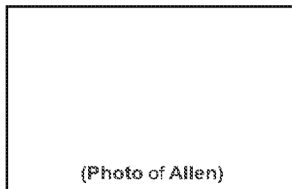
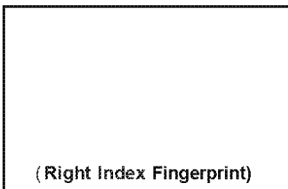
To any U.S. official: This document can be completed and transmitted to OHS/ICE Headquarters Office of Detention and Removal via YP-Bond-Verifications@dhs.gov.

Alien's Acknowledgement of Conditions and Receipt of Form _____ Date _____

Signature of Authorized OHS Official _____ Date _____

OHS Official Serving Form (Name and Title) _____

Office _____

 (Photo of Alien)	If Available	 (Right Index Fingerprint)
---	--------------	---

Verification of Departure (Completion by an official of the Department of Homeland Security or the U.S. Department of state)				
Printed Name/Title	Signature of Official Verifying Identity	Office	Date	Phone Number
U.S. Departure Place				Date
Method of Departure	☐ Air ☐ Train ☐ Boat ☐ Other:			
Comments				

A-File Copy

ICE Form 1-210 (08/08)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement
VOLUNTARY DEPARTURE AND VERIFICATION OF DEPARTURE

To: (Alien's Last Name, First Name, Address)

Alien's Phone Number

A: Number

FIN Number

☐ You have violated the terms of your admission as a nonimmigrant. Consequently, the permission previously granted you to remain in the United States is rescinded. You are required to depart from the United States at your own expense on or before _____

☐ On _____ you were granted voluntary departure by the ☐ IJ ☐ BIA ☐ OHS. You are required to depart from the United States on or before _____ ☐ at your expense. ☐ at government expense. ☐ under safeguard.

☐ Your request for an extension of time to depart from the United States has been _____ . You are required to depart on or before _____ (Grant/denied)

☐ You state that you will be departing the United States on _____ through _____ (Port of Departure) on _____

(Give Airlines, Flight Number and Time or Other Manner of Departure)

NOTICE: The Immigration Judge's Alternate Order of Removal will take effect if the alien does not depart within the time specified. Failure to depart on or before the specified date may result in the withdrawal of voluntary departure and action being taken to effect your removal. A warrant for your arrest will be issued if this office has not received verification of your departure by the specified date. Failure to depart on or before the specified date may also subject you to a possible civil penalty of not less than \$1,000 and not more than \$5,000, and render you ineligible for a period of 10 years for any further authorization for voluntary departure or for relief under sections 240A, 245, 248, and 249 of the Immigration and Nationality Act.

Additionally, if an Immigration Bond has been posted on the alien, the OHS will initiate the appropriate action in accordance with the terms of the executed bond and any attached rider or riders specified.

To any U.S. official: This document can be completed and transmitted to DHSICE Headquarters Office of Detention and Removal via VD-Bond-Verification.dhs.gov.

Alien's Acknowledgement of Conditions and Receipt of Form

Date

Signature of Authorized OHS Official

Date

DHS Official Serving Form (Name and Title)

Office

If
Available

(Photo of Alien)

(Right Index Fingerprint)

Verification of Departure

(Completion by an official of the Department of Homeland Security or the U.S. Department of State)

Printed Name/Title

Signature of Official Verifying Identity

Office

Date

Phone Number

U.S. Departure Place

Date

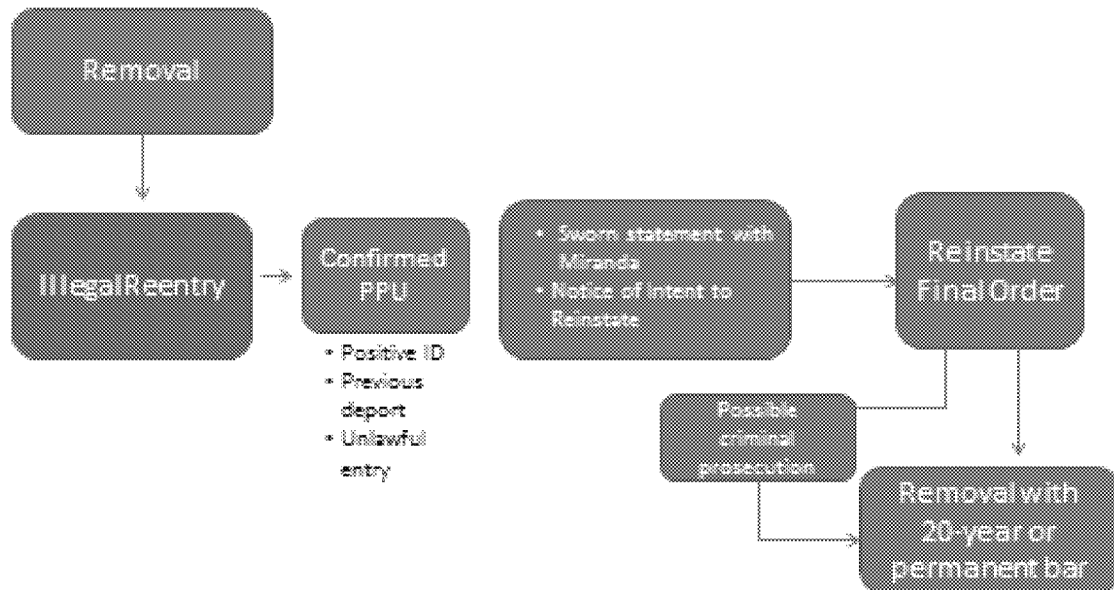
Method of Departure ☐ Air ☐ Train ☐ Boat ☐ Other:

Comments



Attachments for SEGMENT 2 – § 241 Reinstatement of Removal Orders

Reinstatement – 241(a)(5)



File No. _____

Date: _____

Name: _____

In accordance with section 241(a)(5) of the Immigration and Nationality Act (Act) and 8 CFR 241.8, you are hereby notified that the Secretary of Homeland Security intends to reinstate the order of _____ entered against you. This intent is based on the following determinations:

(Deportation/ exclusion/ removal)

1. You are an alien subject to a prior order of deportation/ exclusion/ removal entered on _____ at _____

(Date)

(Location)

2. You have been identified as an alien who:

D was removed on _____ pursuant to an order of deportation / exclusion / removal.

(Date)

D departed voluntarily on _____ pursuant to an order of deportation / exclusion / removal on or _____ after the date on which such order took effect (i.e., who self-deported).

(Date)

3. You illegally reentered the United States on or about _____ at or near _____

(Date) (Location)

In accordance with Section 241(a)(5) of the Act, you are removable as an alien who has illegally reentered the United States after having been previously removed or departed voluntarily while under an order of exclusion, deportation or removal and are therefore subject to removal by reinstatement of the prior order. You may contest this determination by making a written or oral statement to an immigration officer. You **do not** have a right to a hearing before an immigration judge.

The facts that formed the basis of this determination, and the existence of a right to make a written or oral statement contesting this determination, were communicated to the alien in the _____ language.

(Printed or typed name of official)

(Signature of officer)

(Title of officer)

Acknowledgment and Response

I ☐ do ☐ do not wish to make a statement contesting this determination.

(Date)

(Signature of Alien)

Decision, Order, and Officer's Certification

Having reviewed all available evidence, the administrative file and any statements made or submitted in rebuttal, I have determined that the above-named alien is subject to removal through reinstatement of the prior order, in accordance with section 241(a)(5) of the Act.

(Date)

(Location)

(Signature of authorized deciding official)

(Printed or typed name of official)

(Title)

**Record of Sworn Statement in
Administrative Proceedings**

Office: _____ File No: _____

Statement by _____

In the case of: _____

At: _____ Date: _____

Before: _____ In the _____ language.
(Name and Title)

Interpreter: _____ Interpreter employed by: _____

I am an officer of the United States Department of Homeland Security, authorized by law to administer oaths and take testimony in connection with the enforcement of the Immigration and Nationality laws of the United States. I desire to take your sworn statement regarding _____

Fann 1-213 (Rev. 08/01/07)

File No:

Date: October 20, 11

To any officer of the United States Immigration and Naturalization Service;

(b)(6),(b)(7)(C)

(Full name of alien)

aka:

who entered the United States at

Unknown

on

25 JAN 2002

(Place of entry)

(Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

an immigration judge in exclusion, deportation or removal proceedings

Or a district director or a district director's designated official

☐ the Board of Immigration Appeals

Or a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

Section 212(a)(6)(A)(i) of the INA.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the Laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

Transportation company which brought him to the United States, if practicable; otherwise at the expense of the appropriations, "Salaries and Expenses, Immigration and Naturalization Service, 2006" including the expense of an attendant if necessary.

(b)(6),(b)(7)(C)

(Signature of INS official)

Assistant Field Office Director

(Title of INS official)

RETURN EXECUTED I-205 TO:

Immigration and Customs Enforcement

IOE East

Oakdale

F.....
(

To be completed by Service officer executing the warrant:
Name of alien being remove :

Port, date, and manner of removal: tfAotJ,v o u.L. qf q v>{S JD-{D- &t-S;v, /1e.yJ:,co

(b)(6),(b)(7)(C)

Photograph of alien
removed

(b)(6),(b)(7)(C)

Right index. fingerprint
of alien removed

Ar& \$g:/
Cor INS Offr l lalcUg pr u 11)

Departure witnessed by:

A [REDACTED] ICA
(Signature and title of INS official)

If actual departure is not witnessed, fully identify source or means of verification of departure:

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here. ☐

Departure Verified by: _____
(Signature, title, and INS official)

f
f.

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

WARNING TO ALIEN ORDERED REMOVED OR DEPORTED

A-File Number: [REDACTED]

Date: --

Alien's name: [REDACTED]

In accordance with the provisions of section 212(a)(9) of the Immigration and Nationality Act (Act), you are prohibited from entering, attempting to enter, or being in the United States:

For a period of 5 years from the date of your departure from the United States because you have been found deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act initiated upon your arrival in the United States as a returning lawful permanent resident.

For a period of 10 years from the date of your departure from the United States because you have been found:

- i) deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.
- ii) inadmissible under section 212 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act initiated as a result of your having been present in the United States without admission or parole.
- iii) deportable under section 241 of the Act and ordered removed from the United States by an immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act.
- iv) deportable under section 237 of the Act and ordered removed from the United States in accordance with section 238 of the Act by a judge of a United States district court, or a magistrate or a United States magistrate court.

For a period of 20 years from the date of your departure from the United States because, after having been previously excluded, deported, or removed from the United States, you have been found:

- i) inadmissible under section 212 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.
- ii) deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.
- iii) deportable under section 237 of the Act and ordered removed from the United States in proceedings under section 238 of the Act.
- iv) deportable under section 241 of the Act and ordered removed from the United States by an immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act.
- v) to have reentered the United States illegally and have had the privilege of reinstatement under section 241(a)(5) of the Act.

At any time because you have been found inadmissible or deported under section 212 of the Act, or deportable under section 241 of the Act, and ordered removed from the United States, and you have been convicted of a crime designated as an aggravated felony, as defined under section 101(a)(43) of the Act.

After your removal has been effected, you must reapply and obtain permission from the Secretary of Homeland Security to reapply for admission to the United States during the period indicated. You must obtain such permission before commencing your travel to the United States. Application forms for requesting permission to reapply for admission may be obtained by contacting any United States Consulate or U.S. Department of Homeland Security office. Refer to the above file number when requesting further information.

WARNING FOR ALL REMOVED ALIENS: It is a criminal offense for any alien who has been removed from the United States to reenter the United States without the permission of the Secretary of Homeland Security. Any alien who reenters the United States without the permission of the Secretary of Homeland Security is guilty of a crime and may be fined up to \$250,000.

SPECIAL NOTICE FOR SEX OFFENDERS: Any alien who has been removed from the United States and who is a sex offender is prohibited from reentering the United States. Any alien who reenters the United States without the permission of the Secretary of Homeland Security is guilty of a crime and may be fined up to \$250,000.

Deportation Officer

Signature of Service: [REDACTED]

(Title of officer)

(Location of OHS office)

OHS Form 1-294 (3/12)

Page 1 of 1

U.S. DEPARTMENT OF HOMELAND SECURITY
NOTICE TO ALIEN ORDERED REMOVED/DEPARTURE VERIFICATION

A-File No: [REDACTED]

Date: [REDACTED]

Alien's name: [REDACTED]

You have been found to be inadmissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act) or deportable under the provisions of section 237 of the Act as a Visa Waiver Pilot Program violator. In accordance with the provisions of section 212(a)(9) of the Act, you are prohibited from entering, attempting to enter, or being in the United States

D For a period of 5 years from the date of your departure from the United States as a consequence of your having been found inadmissible as an arriving alien in proceedings under section 235(b)(1) or 240 of the Act.

iii For a period of 10 years from the date of your departure from the United States as a consequence of your having been ordered removed in proceedings under any section of the Act other than section 235(b)(1) or 240, or of being admitted under section 236 of the Act in proceedings commenced prior to April 1, 1997.

D For a period of 20 years from the date of your departure from the United States as a consequence of being found inadmissible and being previously excluded, deported, or removed from the United States.

D If, any time because in addition to being found inadmissible, you have been convicted of a crime as an aggravated felony.

After your removal has been effected, you must request and obtain permission from the Secretary of Homeland Security to reapply for admission to the United States during the period indicated. You must obtain such permission before commencing your travel to the United States. Application forms for requesting permission to reapply for admission may be obtained by contacting any United States Consulate or U.S. Department of Homeland Security office. Refer to the above file number when requesting forms or information.

WARNING FOR ALL REMOVED AUENS: If you are a U.S. citizen, you must return to the United States immediately. If you are a permanent resident, you must return to the United States immediately. If you are a temporary lawful permanent resident, you must return to the United States immediately. If you are a conditional permanent resident, you must return to the United States immediately. If you are a naturalized citizen, you must return to the United States immediately. If you are a dual citizen, you must return to the United States immediately. If you are a U.S. citizen, you must return to the United States immediately. If you are a permanent resident, you must return to the United States immediately. If you are a temporary lawful permanent resident, you must return to the United States immediately. If you are a conditional permanent resident, you must return to the United States immediately. If you are a naturalized citizen, you must return to the United States immediately. If you are a dual citizen, you must return to the United States immediately.

SPECIAL NOTICE TO SEX OFFENDERS: If you are a sex offender, you must return to the United States immediately. If you are a sex offender, you must return to the United States immediately. If you are a sex offender, you must return to the United States immediately. If you are a sex offender, you must return to the United States immediately. If you are a sex offender, you must return to the United States immediately. If you are a sex offender, you must return to the United States immediately. If you are a sex offender, you must return to the United States immediately. If you are a sex offender, you must return to the United States immediately. If you are a sex offender, you must return to the United States immediately. If you are a sex offender, you must return to the United States immediately.

(Signature of officer or representative)

(Title of officer)

(Location of DHS Office)

Verification of Removal

(Complete this section by file copy only)

Departure Date	Port of Departure
Signature of Verifying Officer	Title of Officer
Deportation Officer	
Photograph of Alien	Right Index Finger
(Signature of alien whose fingerprint and photograph appear above)	(Signature of official taking fingerprint)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

WARRANT OF REMOVAL/DEPORTATION

File No:

Date:

To any immigration officer of the United States Department of Homeland Security:

(Full name of alien)

who entered the United States at _____ on _____
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

☐ an immigration judge in exclusion, deportation, or removal proceedings

☐ a designated official

☐ the Board of Immigration Appeals

☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

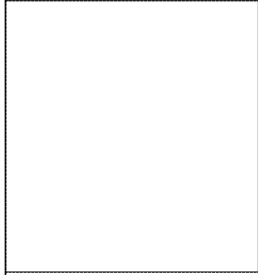
(Signature of immigration officer)

(Title of immigration officer)

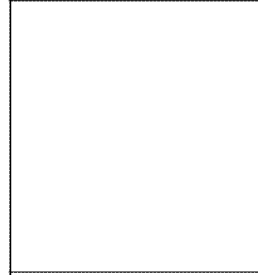
(Date and office location)

To be completed by immigration officer executing the warrant: Name of alien being removed:

Port, date, and manner of removal:



Photograph of alien removed



Right index fingerprint of alien removed

(Signature of alien being fingerprinted)

(Signature and title of immigration officer taking print)

Departure witnessed by:

(Signature and title of immigration officer)

If actual departure is not witnessed, fully identify source or means of verification of departure:

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here.

D

Departure Verified by:

(Signature and title of immigration officer)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

WARNING TO ALIEN ORDERED REMOVED OR DEPORTED

A-File Number: _____

Date: _____

Alien's name: _____

In accordance with the provisions of section 212(a)(9) of the Immigration and Nationality Act (Act), you are prohibited from entering, attempting to enter, or being in the United States:

D For a period of 5 years from the date of your departure from the United States because you have been found deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act initiated upon your arrival in the United States as a returning lawful permanent resident.

D For a period of 10 years from the date of your departure from the United States because you have been found:

D deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.

D inadmissible under section 212 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act initiated as a result of your having been present in the United States without admission or parole.

D deportable under section 241 of the Act and ordered deported from the United States by an immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act.

D deportable under section 237 of the Act and ordered removed from the United States in accordance with section 238 of the Act by a judge of a United States district court, or a magistrate of a United States magistrate court.

D For a period of 20 years from the date of your departure from the United States because, after having been previously excluded, deported, or removed from the United States, you have been found:

D inadmissible under section 212 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.

D deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.

D deportable under section 237 of the Act and ordered removed from the United States in proceedings under section 238 of the Act.

☐ deportable under section 241 of the Act and ordered deported from the United States by an immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act.

D to have reentered the United States illegally and have had the prior order reinstated under section 241(a)(5) of the Act.

D At any time because you have been found inadmissible or excludable under section 212 of the Act, or deportable under section 241 or 237 of the Act, and ordered deported or removed from the United States, and you have been convicted of a crime designated as an aggravated felony, as defined under section 101(a)(43) of the Act.

After your removal has been effected you must request and obtain permission from the Secretary of Homeland Security to reapply for admission to the United States during the period indicated. You must obtain such permission before commencing your travel to the United States. Application forms for requesting permission to reapply for admission may be obtained by contacting any United States Consulate or U.S. Department of Homeland Security office. Refer to the above file number when requesting forms or information.

WARNING FOR ALL REMOVED ALIENS: It is a crime under Title 8 United States Code, Section 1326, for an alien who has been removed from the United States to enter, attempt to enter, or be found in the United States without the Secretary of Homeland Security's express consent. Depending on the circumstances of the removal, conviction for this crime can result in imprisonment of a period of from 2 to 20 years and/or a fine up to \$250,000.00.

SPECIAL NOTICE FOR SEX OFFENDERS: Federal Law requires a convicted sex offender, including an alien who has been removed from or otherwise departed the United States and subsequently returns, to register in each jurisdiction in the United States in which he or she resides, is employed, or is a student. Violation of this requirement can result in prosecution and imprisonment for up to 10 years under Title 18 United States Code, Section 2250.

(Signature of officer serving warning)

(Title of officer)

(Location of OHS office)

INDEX

RECORD FILE

Alien Name

A00-0Q0-0

- ☐ Certification.
- ☐ Notice of Intent/Decision to Reinstate Prior Order (Form 1-871)
- ☐ Prior administrative removal order
- ☐ Notice to Alien Ordered Removed/Departure Verification (Form 1-296)
- ☐ Record check of fingerprint match
- D Any documentary evidence submitted by the alien
- ☐ Record of Sworn Statement or the alien's declination to provide such statement (Form 1-877)
- ☐ Record of Deportable/Inadmissible Alien (Form 1-213)
- ☐ Warrant of Removal/Deportation (Form 1-205)
- ☐ Warning to Alien Ordered Removed or Deported (Form 1-294)
- ☐ Any other evidence relied upon to support the charges
- ☐ Any documents that rebut the alien's assertion that reinstatement is improper

UNITED STATES DEPARTMENT OF HOMELAND SECURITY
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

CERTIFICATION OF _____

1. I am a *[position title]* with U.S. Immigration and Customs Enforcement, United States Department of Homeland Security. I have served in this position since _____. My office is located in _____ and my responsibilities include the maintenance and creation of the official Record of Proceedings. I am the deciding officer in the matter of _____, file number A _____.

2. Annexed to this Certification is the official Record of Proceedings.

I hereby certify to the best of my knowledge and belief that the annexed documents are originals, or copies thereof, of the official Record of Proceedings. These documents relate to:

Subject: _____

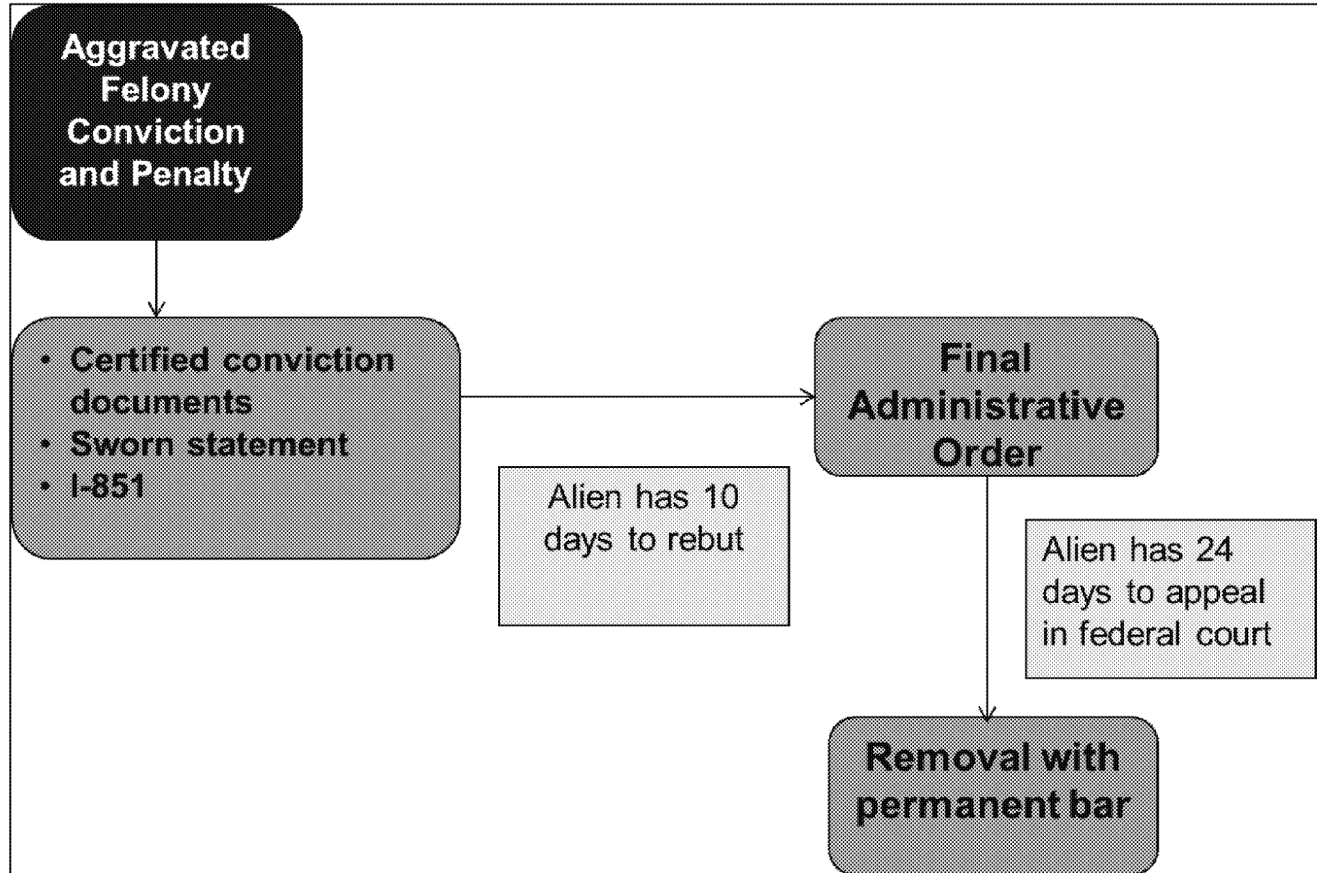
File Number: A _____

Dated: _____ Name _____ Title _____



Attachments for SEGMENT 3 – § 238(b) Administrative Removals

Administrative Removal Under § 238(b) – Expedited Removal of Aggravated Felon



File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

- ☐ the execution of a charging document to initiate removal proceedings against the subject;
- ☐ the pendency of ongoing removal proceedings against the subject;
- ☐ the failure to establish admissibility subsequent to deferred inspection;
- ☐ biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- ☐ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____
(Location)

on _____ on _____, and the contents of this
(Name of Alien) (Date of Service)

notice were read to him or her in the _____ language.
(Language)

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

Family Name (CAPS)		First	Middle	Sex	Hair	Eyes	Complexion
Country of Citizenship	Passport Number and Country of Issue		File Number	Height	Weight	Occupation	
U.S. Address				Scars and Marks			
Date, Place, Time, and Manner of Last Entry			Passenger Boarded at	F.B.I. Number	☒ Single ☒ Divorced ☐ Married ☐ Widower ☐ Separated		
Number, Street, City, Province (State) and Country of Permanent Residence				Method of Location/Apprehension			
Date of Birth	Date of Action	Location Code		At/Near	Date/Hour		
City, Province (State) and Country of Birth		Form : (Type and No.) Lifted ☒ Not Lifted ☐		By			
NIV Issuing Post and NIV Number		Social Security Account Name		Status at Entry		Status When Found	
Date Visa Issued		Social Security Number		Length of Time Illegally in U.S.			
Immigration Record				Criminal Record			
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)				Number and Nationality of Minor Children			
Father's Name, Nationality, and Address, if Known				Mother's Present and Maiden Names, Nationality, and Address, if Known			
Name and Address of (Last)(Current) U.S. Employer				Type of Employment		Salary	
						.1 Employed from/to Hr	
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)							
Alien has been advised of communication privileges _____ (Date/Initials) _____ (Signature and Title of Immigration Officer)							
Distribution:				Received: (Subject and Documents) (Report of Interview)			
				Officer: _____			
				on: _____ (time)			
				Disposition: _____			
				Examining Officer: _____			

Notice of Intent to Issue a Final Administrative Removal Order

In removal proceedings under section 238(b) of the Immigration and Nationality Act

File Number _____

To: _____

Address: _____

(Number, Street, City, State and ZIP Code)

Telephone: _____

(Area Code and Phone Number)

Pursuant to section 238(b) of the Immigration and Nationality Act (Act) as amended, 8 U.S.C. 1228(b), the Department of Homeland Security (Department) has determined that you are amenable to administrative removal proceedings. The determination is based on the following allegations:

1. You are not a citizen or national of the United States.
2. You are a native of _____ and a citizen of _____
3. You entered the United States (at)(near) _____ on or about _____
4. At that time you entered _____
5. You are not lawfully admitted for permanent residence.
6. You were, on _____, convicted in the _____ Court
_____ for the offense of _____
in violation of _____
for which the term of imprisonment imposed was _____

Charge:

You are deportable under section 237(a)(2)(A)(iii) of the Act, 8 U.S.C. 1227(a)(2)(A)(iii), as amended, because you have been convicted of an aggravated felony as defined in section 101(a)(43)() of the Act, 8 U.S.C. 1101(a)(43)().

Based upon section 238(b) of the Act, 8 U.S.C. 1228(b), the Department is serving upon you this NOTICE OF INTENT TO ISSUE A FINAL ADMINISTRATIVE REMOVAL ORDER ("Notice of Intent") without a hearing before an Immigration Judge.

Your Rights and Responsibilities:

You may be represented (at no expense to the United States government) by counsel, authorized to practice in this proceeding. If you wish legal advice and cannot afford it, you may contact legal counsel from the list of available free legal services provided to you.

You must respond to the above charges in writing to the Department address provided on the other side of this form within 10 calendar days of service of this notice (or 13 calendar days if service is by mail). **The Department must RECEIVE your response within that time period.**

In your response you may: request, for good cause, an extension of time; rebut the charges stated above (with supporting evidence); request an opportunity to review the government's evidence; admit deportability; designate the country to which you choose to be removed in the event that a final order of removal is issued (which designation the Department will honor only to the extent permitted under section 241 of the Act, 8 U.S.C. 1231); and/or, if you fear persecution in any specific country or countries on account of race, religion, nationality, membership in a particular social group, or political opinion or, if you fear torture in any specific country or countries, you may request withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. 1231(b)(3), or withholding/deferral of removal under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture). A grant of withholding or deferral of removal would prohibit your return to a country or countries where you would be persecuted or tortured, but would not prevent your removal to a safe third country.

You have the right to remain in the United States for 14 calendar days so that you may file a petition for review of this order to the appropriate U.S. Circuit Court of Appeals as provided for in section 242 of the Act, 8 U.S.C. 1252. You may waive your right to remain in the United States for this 14-day period. If you do not file a petition for review within this 14-day period, you will still be allowed to file a petition from outside of the United States so long as that petition is filed with the appropriate U.S. Circuit Court of Appeals within 30 calendar days of the date of your final order of removal.

(Signature and Title of Issuing Officer)

(City and State of Issuance)

(Date and Time)

Form 1-851 (Rev. 08/01/07)

Certificate of Service

I served this Notice of Intent. I have determined that the person served with this document is the individual named on the other side of the form.

(Signature and Title of Officer)

(Date and Manner of Service)

☐ I explained and/or served this Notice of Intent to the alien in the _____ language.

(Name of interpreter)

(Signature of interpreter)

Location/Employer:

I Acknowledge that I Have Received this Notice of Intent to Issue a Final Administrative Removal Order.

(Signature of Respondent)

(Date and Time)

☐ The alien refused to acknowledge receipt of this document.

(Signature and Title of Officer)

(Date and Time)

☐ **I Wish to Contest and/or to Request Withholding of Removal**

☐ I contest my deportability because: *(Attach any supporting documentation)*

- ☐ I am a citizen or national of the United States.
- ☐ I am a lawful permanent resident of the United States.
- ☐ I was not convicted of the criminal offense described in allegation number 6 above.
- ☐ I am attaching documents in support of my rebuttal and request for further review.

☐ I request withholding or deferral of removal to _____ !Name of Country or Countries]:

- ☐ Under section 241(b)(3) of the Act, 8 U.S.C. 1231(b)(3), because I fear persecution on account of my race, religion, nationality, membership in a particular social group, or political opinion in that country or those countries.
- ☐ Under the Convention Against Torture, because I fear torture in that country or those countries.

(Signature of Respondent)

(Printed Name of Respondent)

(Date and Time)

☐ **I Do Not Wish to Contest and/or to Request Withholding of Removal**

☐ I admit the allegations and charge in this Notice of Intent. I admit that I am deportable and acknowledge that I am not eligible for any form of relief from removal. I waive my right to rebut and contest the above charges. I do not wish to request withholding or deferral of removal. I wish to be removed to _____

☐ I understand that I have the right to remain in the United States for 14 calendar days in order to apply for judicial review. I do not wish this opportunity. I waive this right.

(Signature of Respondent)

(Printed Name of Respondent)

(Date and Time)

(Signature of Witness)

(Printed Name of Witness)

(Date and Time)

**RETURN THIS FORM TO:
Department Of Homeland Security**

ATTENTION:

The Department office at the above address must RECEIVE your response within 10 calendar days from the date of service of this Notice of Intent (13 calendar days if service is by mail).

Final Administrative Removal Order

In removal proceedings under section 238(b) of the Immigration and Nationality Act

File Number

Date

To: _____

Address: _____

(Number, Street, City, State and ZIP Code)

Telephone: _____

(Area Code and Phone Number)

ORDER

Based upon the allegations set forth in the Notice of Intent to Issue a Final Administrative Removal Order and evidence contained in the administrative record, I, the undersigned Deciding Officer of the Department of Homeland Security, make the following findings of fact and conclusions of law. I find that you are not a citizen or national of the United States and that you are not lawfully admitted for permanent residence. I further find that you have a final conviction for an aggravated felony as defined in section 101(a)(43)() of the Immigration and Nationality Act (Act) as amended, 8 U.S.C. 1101(a)(43)(), and are ineligible for any relief from removal that the Secretary of Homeland Security, may grant in an exercise of discretion. I further find that the administrative record established by clear, convincing, and unequivocal evidence that you are deportable as an alien convicted of an aggravated felony pursuant to section 237(a)(2)(A)(iii) of the Act, 8 U.S.C. 1227(a)(2)(A)(iii). By the power and authority vested in the Secretary of Homeland Security, and in me as the Secretary's delegate under the laws of the United States, I find you deportable as charged and order that you be removed from the United States to:

_____ or to any alternate country prescribed in section 241 of the Act.

(Signature of Authorized Official)

(Title of Official)

(Date and Office Location)

Certificate of Service

I served this FINAL ADMINISTRATIVE REMOVAL ORDER upon the above named individual.

(Date, Time, Place and Manner of Service)

(Signature and Title of Officer)

Form I-851A (Rev. 08/01/07)

**Record of Sworn Statement in
Administrative Proceedings**

Office: _____ File No: _____

Statement **by** _____

In the case **of:** _____

At: _____ **Date:** _____

Before: _____ In the _____ language.
(Name and Title)

Interpreter: _____ Interpreter employed by: _____

I am an officer of the United States Department of Homeland Security, authorized by law to administer oaths and take testimony in connection with the enforcement of the Immigration and Nationality laws of the United States. I desire to take your sworn statement **regarding** _____

U.S. Department of Homeland Security

Notice to Appear, Bond, and Custody Processing Sheet

A. Alien's Name

Date of birth

FileNo.

Date of processing

Address

Factual Allegations (attach separate sheet if necessary):

D Charged under section 212 as inadmissible

D Charged under section 237 as deportable

D Attorney of Record?

Supporting Evidence

B. ADDITIONAL FACTORS TO BE CONSIDERED FOR BOND/CUSTODY DETERMINATION

1. Is a petition or application pending for this alien or a family member? (Explain)

2. Total times apprehended

Bonded before? __

How many times? --

Released O/R before?

Bond breached? __

How many times?

Complied with terms of O/R? _____

3. Present health of subject, spouse and children (Explain if other than good)

4. Total time in U.S., dates and location; residing with (Family members or others)

5. Personal property in U.S. (Liquid and non-liquid assets)

6. Family members in U.S. (Spouse, children, immediate relatives) address if different than subject's

7. Employment history: (Other than current)

8. Other factors (i.e. false claim, attempted flight, unsupervised children at home, etc.

C. The undersigned recommends: ☐ VD without NTA

☐ NTA Charges (Code)

Signature and title of officer

~~D. Approved as to legal sufficiency:~~ Date: _____

~~Office:~~ _____

E. Based on the above information I have set the following bond: \$ _____

Date: _____

Office: _____

Signature and title of Service counsel: _____

Signature and title of authorizing official: _____

INDEX

RECORD FILE

Alien Name

A00-000-0

D Certification.

- ☐ Notice of Intent to Issue a Final Administrative Removal Order (Form 1-851)
- ☐ Evidence of immigration status (CIS, RAPS, NIIS, etc.)
- ☐ Record of Deportable/Inadmissible Alien (Form 1-213)
- ☐ Record of Sworn Statement or the alien's declination to provide such statement (Form 1-877)
- ☐ Final Administrative Removal Order (including any supplemental memorandum of decision)(Form 1-851 A)
- ☐ Certified Conviction documents for commission of an aggravated felony. Any response the alien offers

D Any evidence the government relied upon to support the charges

- ☐ All admissible evidence (briefs and other documents) submitted by either party respecting deportability

UNITED STATES DEPARTMENT OF HOMELAND SECURITY
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

CERTIFICATION OF _____

1. I am a *[position title]* with U.S. Immigration and Customs Enforcement, United States Depmiment of Homeland Security. I have served in this position since _____. My office is located in _____ and my responsibilities include the maintenance and creation of the official Record of Proceedings. I am the deciding officer in the matter of _____, file number A _____

2. Annexed to this Celiiification is the official Record of Proceedings.

I hereby certify to the best ofmy knowledge and belief that the annexed documents are originals, or copies thereof, of the official Record of Proceedings. These documents relate to:

Subject:

File Number: A

Dated: _____ Name _____ Title

L 31 J & C

Ticket: T00223366

Status: C

Case: (b)(6),(b)(7)(C)

Docket: 123123123

Name: [REDACTED]

OBTS

Sex: [REDACTED]

Race: [REDACTED]

Height: [REDACTED]

DOB: -

Weight: [REDACTED]

Address:

(b)(6),(b)(7)(C)

Hair color:

Eye color:

(b)(6),(b)(7)(C)

Offense Date: (b)(6),(b)(7)(C)

Violation: Ga. Penal Code §1807 Assault with a Deadly Weapon

Officer: [REDACTED]

Badge: 3255

Agency: Atlanta Police Dept

Location: Oak Drive, 1

STATE COURT OF FULTON
COUNTY GEORGIA

Court Date:

(b)(6),(b)(7)(C)

Disp Date:

Plea:

(b)(6),(b)(7)(C)

Finding:

Sentence: (b)(6),(b)(7)(C)

Incarceration - waiver, 100%
Rock Springs, GA

Probation: N

(b)(7)(E)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

WARRANT OF REMOVAL/DEPORTATION

File No:

Date: _____

To any immigration officer of the United States Department of Homeland Security:

(Full name of alien)

who entered the United States at _____ on _____
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

☐ an immigration judge in exclusion, deportation, or removal proceedings

☐ a designated official

☐ the Board of Immigration Appeals

☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

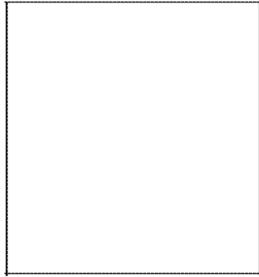
(Signature of immigration officer)

(Title of immigration officer)

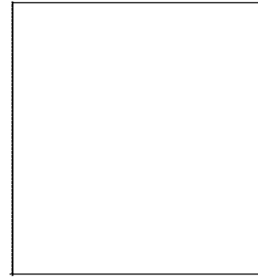
(Date and office location)

To be completed by immigration officer executing the warrant: Name of alien being removed:

Port, date, and manner of removal:



Photograph of alien removed



Right index fingerprint of alien removed

(Signature of alien being fingerprinted)

(Signature and title of immigration officer taking print)

Departure witnessed by:

(Signature and title of immigration officer)

If actual departure is not witnessed, fully identify source or means of verification of departure:

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here.

D

Departure Verified by:

(Signature and title of immigration officer)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

WARNING TO ALIEN ORDERED REMOVED OR DEPORTED

A-File Number: _____

Date: _____

Alien's name: _____

In accordance with the provisions of section 212(a)(9) of the Immigration and Nationality Act (Act), you are prohibited from entering, attempting to enter, or being in the United States:

D For a period of 5 years from the date of your departure from the United States because you have been found deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act initiated upon your arrival in the United States as a returning lawful permanent resident.

D For a period of 10 years from the date of your departure from the United States because you have been found:

D deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.

D inadmissible under section 212 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act initiated as a result of your having been present in the United States without admission or parole.

D deportable under section 241 of the Act and ordered deported from the United States by an immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act.

D deportable under section 237 of the Act and ordered removed from the United States in accordance with section 238 of the Act by a judge of a United States district court, or a magistrate of a United States magistrate court.

D For a period of 20 years from the date of your departure from the United States because, after having been previously excluded, deported, or removed from the United States, you have been found:

D inadmissible under section 212 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.

D deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.

D deportable under section 237 of the Act and ordered removed from the United States in proceedings under section 238 of the Act.

☐ deportable under section 241 of the Act and ordered deported from the United States by an immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act.

D to have reentered the United States illegally and have had the prior order reinstated under section 241(a)(5) of the Act.

D At any time because you have been found inadmissible or excludable under section 212 of the Act, or deportable under section 241 or 237 of the Act, and ordered deported or removed from the United States, and you have been convicted of a crime designated as an aggravated felony, as defined under section 101(a)(43) of the Act.

After your removal has been effected you must request and obtain permission from the Secretary of Homeland Security to reapply for admission to the United States during the period indicated. You must obtain such permission before commencing your travel to the United States. Application forms for requesting permission to reapply for admission may be obtained by contacting any United States Consulate or U.S. Department of Homeland Security office. Refer to the above file number when requesting forms or information.

WARNING FOR ALL REMOVED ALIENS: It is a crime under Title 18 United States Code, Section 1326, for an alien who has been removed from the United States to enter, attempt to enter, or be found in the United States without the Secretary of Homeland Security's express consent. Depending on the circumstances of the removal, conviction for this crime can result in imprisonment of a period of from 2 to 20 years and/or a fine up to \$250,000.00.

SPECIAL NOTICE FOR SEX OFFENDERS: Federal Law requires a convicted sex offender, including an alien who has been removed from or otherwise departed the United States and subsequently returns, to register in each jurisdiction in the United States in which he or she resides, is employed, or is a student. Violation of this requirement can result in prosecution and imprisonment for up to 10 years under Title 18 United States Code, Section 2250.

(Signature of officer serving warning)

(Title of officer)

(Location of OHS office)

Family Name (CAPS)		First	Middle	Sex	Hair	Eyes	Complexion	
Country of Citizenship		Passport Number and Country of Issue		File Number		Height	Weight	Occupation
U.S. Address				Scars and Marks				
Date, Place, Time, and Manner of Last Entry				Passenger Boarded at		F.B.I. Number		☐ Single ☐ Divorced ☐ Married ☐ Widower ☐ Separated
Number, Street, City, Province (State) and Country of Permanent Residence				Method of Location/Apprehension				
Date of Birth		Date of Action	Location Code	At/Near		Date/Hour		
City, Province (State) and Country of Birth		Form: (Type and No.) Lifted ☒ Not Lifted ☐		By				
NIV Issuing Post and NIV Number		Social Security Account Name		Status at Entry		Status When Found		
Date Visa Issued		Social Security Number		Length of Time Illegally in U.S.				
Immigration Record				Criminal Record				
Name, Address, and Nationality of Spouse (If valid Name, if Appropriate)				Number and Nationality of Children				
Father's Name, Nationality, and Address, if Known				Mother's Present and Maiden Names, Nationality, and Address, if Known				
Name and Address of (Last)(Current) U.S. Employer				Type of Employment		Salary		Employed from/to
								Hr
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)								
Alien has been advised of communication privileges				(Date/Initials)		(Signature and Title of Immigration Officer)		
Distribution:				Received: (Subject and Documents) (Report of Interview)				
				Officer: _____				
				on: _____ (time)				
				Disposition: _____				
				Examining Officer: _____				

**Record of Sworn Statement in Proceedings
under Section 235(b)(1) of the Act**

Office: _____

File No: _____

Statement by: _____

In the case of: _____

Date of Birth: _____

Gender (circle one): Male Female

At: _____ Date: _____

Before: _____
(Name and Title)

In the _____ language. Interpreter _____ Employed by _____

I am an officer of the United States Department of Homeland Security. I am authorized to administer the immigration laws and to take sworn statements. I want to take your sworn statement regarding your application for admission to the United States. Before I take your statement, I also want to explain your rights, and the purpose and consequences of this interview.

You do not appear to be admissible or to have the required legal papers authorizing your admission to the United States. This may result in your being denied admission and immediately returned to your home country without a hearing. If a decision is made to refuse your admission into the United States, you may be immediately removed from this country, and if so, you may be barred from reentry for a period of 5 years or longer.

This may be your only opportunity to present information to me and the Department of Homeland Security to make a decision. It is very important that you tell me the truth. If you lie or give misinformation, you may be subject to criminal or civil penalties, or barred from receiving immigration benefits or relief now or in the future.

Except as I will explain to you, you are not entitled to a hearing or review.

U.S. law provides protection to certain persons who face persecution, harm or torture upon return to their home country. If you fear or have a concern about being removed from the United States or about being sent home, you should tell me so during this interview because you may not have another chance. You will have the opportunity to speak privately and confidentially to another officer about your fear or concern. That officer will determine if you should remain in the United States and not be removed because of that fear.

Until a decision is reached in your case, you will remain in the custody of the Department of Homeland Security.

Any statement you make may be used against you in this or any subsequent administrative proceeding.

**Jurat for Record of Sworn Statement in
Proceedings under Section 235(b)(1) of the Act**

Q: Why did you leave your home country or country of last residence?

A. _____

Q: Do you have any fear or concern about being returned to your home country or being removed from the United States?

A. _____

Q: Would you be harmed if you are returned to your home country or country of last residence?

A. _____

Q: Do you have any question or is there anything else you would like to add?

A. _____

I have read (or have had read to me) this statement, consisting of _pages (including this page). I state that my answers are true and correct to the best of my knowledge and that this statement is a full, true and correct record of my interrogation on the date indicated by the above named officer of the Department of Homeland Security. I have initialed each page of this statement (and the corrections noted on page(s) _____).

Signature: _____

Sworn and subscribed to before me at _____
on _____

Signature of Immigration Officer

Witnessed by: _____

U.S. DEPARTMENT OF HOMELAND SECURITY
NOTICE TO ALIEN ORDERED REMOVED/DEPARTURE VERIFICATION

A-File No: _____
Date: _____

Alien's name: _____

You have been found to be inadmissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act) or deportable under the provisions of section 237 of the Act as a Visa Waiver Pilot Program violator. In accordance with the provisions of section 212(a)(9) of the Act, you are prohibited from entering, attempting to enter, or being in the United States

D For a period of 5 years from the date of your departure from the United States as a consequence of your having been found inadmissible as an arriving alien in proceedings under section 235(b)(1) or 240 of the Act.

D For a period of 10 years from the date of your departure from the United States as a consequence of your having been ordered removed in proceedings under any section of the Act other than section 235(b)(1) or 240, or of being ordered excluded under section 236 of the Act in proceedings commenced prior to April 1, 1997.

D For a period of 20 years from the date of your departure from the United States as a consequence of being found inadmissible and being previously excluded, deported, or removed from the United States.

D At any time because in addition to being found inadmissible, you have been convicted of a crime designated as an aggravated felony.

After your removal has been effected, you must request and obtain permission from the Secretary of Homeland Security to reapply for admission to the United States during the period indicated. You must obtain such permission before commencing your travel to the United States. Application forms for requesting permission to reapply for admission may be obtained by contacting any United States Consulate or U.S. Department of Homeland Security office. Refer to the above file number when requesting forms or information.

WARNING FOR ALL REMOVED ALIENS: It is a crime under Title 8 United States Code, Section 1326, for an alien who has been removed from the United States to enter, attempt to enter, or be found in the United States without the Secretary of Homeland Security's express consent. Depending on the circumstances of the removal, conviction for this crime can result in imprisonment of a period of from 2 to 20 years and/or a fine up to \$250,000.

SPECIAL NOTICE TO SEX OFFENDERS: Federal Law requires a convicted sex offender, including an alien who has been removed from or otherwise departed the United States and subsequently returns, to register in each jurisdiction in the United States in which he or she resides, is employed, or is a student. Violation of this requirement can result in prosecution and imprisonment for up to 10 years under Title 18 United States Code, Section 2250.

(Signature of officer serving warning)

(Title of officer)

(Location of OHS Office)

Verification of Removal

(Complete this section for file copy only)

Departure Date	Port of Departure	Manner of Departure
Signature of Verifying Officer		Title of Officer

Photograph of Alien

Right Index Finger

(Signature of alien whose fingerprint and photograph appear above)

(Signature of official taking fingerprint)

DETERMINATION OF INADMISSIBILITY

File No:

Date:

In the Matter of:

Pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act), (8 U.S.C. 1225(b)(1)), the Department of Homeland Security has determined that you are inadmissible to the United States under section(s) 212(a) D (6)(C)(i); D (6)(C)(ii); D (7)(A)(i)(I); D (7)(A)(i)(II); D (7)(B)(i)(I); and/or D (7)(B)(i)(II) of the Act, as amended, and therefore are subject to removal, in that:

.....
Name and title of immigration officer (Print).....
Signature of immigration officerORDER OF REMOVAL
UNDER SECTION 235(b)(1) OF THE ACT

Based upon the determination set forth above and evidence presented during inspection or examination pursuant to section 235 of the Act, and by the authority contained in section 235(b)(1) of the Act, you are found to be inadmissible as charged and ordered removed from the United States.

.....
Name and title of immigration officer (Print).....
Signature of immigration officer.....
Name and title of supervisor (Print).....
Signature of supervisor, if available

D Check here if supervisory concurrence was obtained by telephone or other means (no supervisor on duty).

CERTIFICATE OF SERVICE

I personally served the original of this notice upon the above-named person on _____
(Date)

.....
Signature of immigration officer

Family Name (CAPS)		First	Middle	Sex	Hair	Eyes	Complexion	
Country of Citizenship		Passport Number and Country of Issue		File Number		Height	Weight	Occupation
U.S. Address				Scars and Marks				
Date, Place, Time, and Manner of Last Entry				Passenger Boarded at		F.B.I. Number		☐ Single ☐ Divorced ☐ Married ☐ Widower ☐ Separated
Number, Street, City, Province (State) and Country of Permanent Residence				Method of Location/Apprehension				
Date of Birth		Date of Action	Location Code	At/Near		Date/Hour		
City, Province (State) and Country of Birth		Form: (Type and No.) Lifted ☒ Not Lifted ☐		By				
NIV Issuing Post and NIV Number		Social Security Account Name		Status at Entry		Status When Found		
Date Visa Issued		Social Security Number		Length of Time Illegally in U.S.				
Immigration Record				Criminal Record				
Name, Address, and Nationality of Spouse (If valid Name, if Appropriate)				Number and Nationality of Minor Children				
Father's Name, Nationality, and Address, if Known				Mother's Present and Maiden Names, Nationality, and Address, if Known				
Name and Address of (Last)(Current) U.S. Employer				Type of Employment		Salary		Employed from/to
								Hr
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)								
Alien has been advised of communication privileges				(Date/Initials)		(Signature and Title of Immigration Officer)		
Distribution:				Received: (Subject and Documents) (Report of Interview)				
				Officer: _____				
				on: _____ (time)				
				Disposition: _____				
				Examining Officer: _____				

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

- ☐ the execution of a charging document to initiate removal proceedings against the subject;
- ☐ the pendency of ongoing removal proceedings against the subject;
- ☐ the failure to establish admissibility subsequent to deferred inspection;
- ☐ biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- ☐ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____
(Location)

on _____ on _____, and the contents of this
(Name of Alien) (Date of Service)

notice were read to him or her in the _____ language.
(Language)

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

VISA WAIVER PROGRAM (VWP)
NOTICE OF INTENT TO ISSUE A FINAL ADMINISTRATIVE REMOVAL ORDER

File Number: A

Alien's Name:

The Department of Homeland Security (OHS) has determined that you entered the United States pursuant to Section 217 of the Immigration and Nationality Act (INA or the Act). Accordingly, you signed and agreed to the conditions stated on Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Document or the Electronic System of Travel Authorization (ESTA), either of which explained to you the conditions of admission under the Visa Waiver Program. As a condition of your admission into the United States under the Visa Waiver Program, you agreed to waive your right to contest any removal action, other than on the basis of an application for asylum.

OHS alleges that:

Based on the information above, you are subject to removal from the United States pursuant to the following provision(s) of law:

Therefore, OHS is serving you this Notice of Intent to Issue a Final Administrative Removal Order ("Notice of Intent"). You are not entitled to a hearing before an Immigration Judge regarding your removability.

.....
(City and State)

.....
(Date)

.....
(Printed Name)

.....
(Title)

.....
(Signature of Issuing Officer)

If you wish to contest any of the above factual allegations or your removability, you will be granted 48 hours from the time of service of this notice to do so. You may request, for good cause, an extension of time to rebut the charges stated above, to obtain supporting evidence, or to consult an attorney. If you fear persecution in your country of nationality, citizenship, or last residence on account of race, religion, nationality, membership in a particular social group, or political opinion you may apply for asylum under section 208 of the Act or withholding of removal under section 241(b)(3) of the Act. If you fear torture in your country of nationality, citizenship, or last residence, you may apply for withholding or deferral of removal under regulations implementing U.S. obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture). A grant of withholding or deferral of removal would prohibit your return to a country or countries where you are more likely than not to be persecuted or tortured, but would not prevent your removal to other countries. If you fail to respond to these charges within the required timeframe, you will be ordered removed from the United States to your country of nationality, citizenship, or last residence. In the event OHS cannot remove you to one of the aforementioned countries, attempts will be made to remove you to a country in accordance with section 241(b)(2)(E) of the Act. You do not have any administrative appeal rights once the removal order has been issued by the deciding official. Subject to DHS's discretion, you may be detained pending your removal.

Certificate of Service

I personally served this Notice of Intent on the alien. I have determined that the person served with this document is the individual named on this form. I explained this Notice of Intent to the alien in the _____ language, and confirmed that he/ she understood it,

D without the need of an interpreter; OR

D via an interpreter, _____ (Name/Title/ID/Company).

(Printed Name and Title of Officer)

(Signature of Officer)

(Date/Time)

I acknowledge that I have received this Notice of Intent

(Alien's Signature)

(Date)

D Alien refused to acknowledge receipt of this document (witness signature required if alien refuses to sign).

(Printed Name and Title of Witness)

(Signature of Witness)

(Date/Time)

I do not wish to contest the allegations and charge(s) contained in the Notice of Intent

D I admit the allegations and charge(s) in this Notice of Intent. I do not wish to request Asylum, Withholding or Deferral of Removal. I wish to be removed from the United States to my country of nationality, citizenship, or last residence.

D I admit the allegations and charge(s) in this Notice of Intent. However, I wish to request Asylum, Withholding or Deferral of Removal as notated below.

OR

I Wish to Contest Removability

D I contest the allegations and charge(s) in this Notice of Intent: (Attach any supporting documentation) _____

D I am a citizen or national of the United States.

D I am a lawful permanent resident of the United States.

D I have been granted refugee or asylee status in the United States, or withholding or deferral of removal.

D I did not last enter the United States pursuant to the Visa Waiver Program. _____

D I am in compliance with the terms of my admission and was admissible at the time of entry.

D I am a citizen of _____ and eligible for Temporary Protected Status in accordance with Section 244 of the Act.

D Other _____

AND/OR

~~I Wish to Request Asylum, Withholding or Deferral of Removal~~

D I request asylum, withholding or deferral of removal to _____ (Name(s) of Country or Countries):

D Under Sections 208 or 241(b)(3) of the Act, because I fear persecution on account of my race, religion, nationality, membership in a particular social group, or political opinion in that country or those countries.

D Under the regulations implementing U.S obligations under Article 3 of the Convention Against Torture, because I fear torture in that country or those countries.

(Alien's Signature)

(Date)

The alien was provided a copy of this Notice of Intent. After having provided the alien with a 48-hour period to respond (if applicable) to these allegations and charge(s), the alien has (check all boxes that apply):

D Admitted the allegations and charge(s).

D Contested the allegations.

D Not made any claim for relief from removal.

D Made a request for asylum, withholding, or deferral of removal (Form 1-863 Notice of Referral to Immigration Judge issued).

D Failed or refused to respond to the allegations.

(Printed Name and Title of Officer)

(Signature of Officer)

(Date/Time)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

RECORD OF PROCEEDING
VISA WAIVER REMOVAL - CHECK LIST

Alien Name: _____

Alien File #: A _____

☐ Certification of Authenticity of the Record of Proceedings.

☐ Removal Order.

☐ Notice of Intent to Issue a Final Administrative Removal Order.

☐ Record of Deportable/Inadmissible Alien (Form 1-213).

☐ Any evidence relied upon to support the charges:

☐ Passport/Other Identification

☐ I-94W - Nonimmigrant Visa Waiver Arrival/Departure Document

☐ Electronic System of Travel Authorization (ESTA)

☐ Electronic Entry Data, e.g., US-VISIT - Encounter Details, TECS (1-94 Arrival/Departure Display)

☐ Sworn Statement (If additional information is needed to support the charges)

☐ Other _____

☐ Any documentary evidence submitted by the alien asserting removal is improper.

Describe: _____

☐ Any documents that rebut the alien's assertion that removal is improper.

Describe: _____

Signature for Legal Sufficiency: _____

Printed Name and Title: _____ Date: _____

Signature of Deciding Official: _____

Printed Name and Title: _____ Date: _____

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

CERTIFICATION OF AUTHENTICITY OF THE RECORD OF PROCEEDINGS

1. I am a _____ with U.S. Immigration and Customs Enforcement,
United States Department of Homeland Security. I have served in this position since _____ My office is located in
_____ and my responsibilities include the maintenance and
creation of the official Record of Proceedings. I am the deciding official in the matter of: _____
_____,file number **A** -----

2. Annexed to this Certification is the official Record of Proceedings.

I hereby certify to the best of my knowledge and belief that the annexed documents are originals, or copies thereof, of the official
Record of Proceedings. These documents relate to:

Subject: _____

File Number: A _____

Dated: _____

Printed Name, Signature, Title and Office Location

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

**VISA WAIVER PROGRAM (VWP)
FINAL ADMINISTRATIVE REMOVAL ORDER**

File Number: A

Alien's Name: _____

VISA WAIVER PROGRAM VIOLATOR

Based upon the allegations set forth in the Notice of Intent and evidence contained in the administrative record, I, the undersigned Deciding Official of the Department of Homeland Security (DHS), make the following determinations:

1. You are not a citizen or national of the United States;
2. You were admitted to the United States as a nonimmigrant visitor on _____ **at** _____ pursuant to Section 217 of the Immigration and Nationality Act under the Visa Waiver Program after executing Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Document or the Electronic System of Travel Authorization (ESTA), either of which explained to you the conditions of admission under the Visa Waiver Program and that you waived any right to contest, other than on the basis of an application for asylum, any action for your removal; and
3. The administrative record establishes by clear and convincing evidence that you are removable.

By the power and authority vested in the Secretary of Homeland Security, and in me as the Secretary's delegate under the laws of the United States, I find you removable as charged and order that you be removed from the United States.

You are hereby ordered removed to: _____ . This order is final and not subject to administrative appeal.
(Country)

You have limited judicial appeal rights. OHS will proceed with your removal from the United States unless a court order is issued to stay your removal or an application for asylum, withholding or deferral of removal is pending before the Department of Justice, Executive Office for Immigration Review.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command any DHS Officer with authority to enforce United States immigration law to take into custody and remove from the United States, the above-named alien.

(Printed Name, Title, and Signature of Deciding Official)

(City and State)

(Date)

Certificate of Service

I personally served this Final Administrative Removal Order on the alien. I have determined that the person served with this document is the individual named on this form. I explained this Final Administrative Removal Order to the alien in the _____ language, and confirmed that he/she understood it, ☒ without the need of an interpreter; OR ☐ via an interpreter, _____ (Name/Title/ID/Company).

(Printed Name, Signature and Title of Officer)

(Date)

I acknowledge that I have received a copy of this Final Administrative Removal Order.

(Alien's Signature)

(Date)

☒ Alien refused to acknowledge receipt of this document (Witness signature required if alien refuses to sign).

(Printed Name, Signature and Title of Witness)

(Date)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

VISA WAIVER PROGRAM (VWP)
NOTICE TO ALIEN ORDERED REMOVED/DEPARTURE VERIFICATION

File Number: A _____

Alien's Name: _____ Date: _____

You entered the United States under the provisions of the Visa Waiver Program, pursuant to section 217 of the Immigration and Nationality Act (INA or the Act). You have been determined to be removable from the United States. In accordance with the provisions of section 212(a)(9)(A) of the Act, you are prohibited from entering, attempting to enter, or being in the United States:

- D For a period of 10 years from the date of your departure from the United States as a consequence of your having been ordered removed by a designated official pursuant to Section 217 of the Act.
- D For a period of 20 years from the date of your departure from the United States as a consequence of your having been found removable while having been previously excluded, deported, or removed from the United States.
- D At any time because in addition to having been found removable, you have been convicted of a crime designated as an aggravated felony.

After your removal has been effected, if you desire to reenter the United States during the applicable period of prohibition, you must request and obtain permission from the Secretary of Homeland Security to reapply for admission to the United States. You must obtain such permission before commencing your travel to the United States. Application forms for requesting such permission may be obtained by contacting any United States Consulate or by visiting the U.S. Citizenship and Immigration Services (www.uscis.gov) website.

WARNING FOR ALL REMOVED ALIENS: It is a crime under title 8 United States Code, Section 1326, for an alien who has been removed from the United States to enter, attempt to enter, or be found in the United States without the Secretary of Homeland Security's express consent. Depending on the circumstances of the removal, conviction for this crime can result in imprisonment for a period of 2 to 20 years and/or a fine up to \$250,000.

SPECIAL NOTICE TO SEX OFFENDERS: Federal Law requires a convicted sex offender, including an alien who has been removed from or otherwise departed the United States and subsequently returns, to register in each jurisdiction in the United States in which he or she resides, is employed, or is a student. Violation of this requirement can result in prosecution and imprisonment for up to 10 years under title 18 United States Code, Section 2250.

Certificate of Service

I personally served this form on the alien. I have determined that the person served with this document is the individual named on this form. I explained this form to the alien in the _____ language, and confirmed that he/she understood it, D without the need of an interpreter; OR D via an interpreter, _____ (Name/Title/ID/Company).

(Printed Name, Title, and Signature of Officer serving warning) (Service Date) (Location)

Verification of Removal

(Complete this section for file copy only)

Departure date: _____	Port of departure: _____	Manner of departure: _____
Printed name and title of verifying officer: _____	Duty location of verifying officer: _____	Signature of verifying officer: _____



Photograph of alien Right index fingerprint (Signature of alien whose photograph and fingerprint appear on this form)

D Alien refused to sign this document. (If applicable - witness signature required.)

(Printed Name, Title, and Signature of Witness) (Date)

**I-589 Application for Asylum and
for Withholding of Removal
(including consideration for
Deferral of Removal under the
Convention Against Torture)**

GRANT OF ASYLUM

- Alien now referred to as "Asylee"
- Asylum may be granted by USCIS (Asylum Officer) or Immigration Judge and does not expire
- Alien may apply to adjust status
- Asylees encountered who may not be removable under § 237 should be placed in 240 removal proceedings

**GRANT OF
WITHHOLDING OR
DEFERRAL OF
REMOVAL UNDER CAT**

- Alien is NOT allowed to adjust status
- Alien may still be removed from the United States to alternate country
- The grant of Withholding or Deferral of Removal under CAT does not expire

I-589 Application for Asylum and for Withholding of Removal

[page 1 only]

Department of Homeland Security
U.S. Citizenship and Immigration Services

U.S. Department of Justice
Executive Office for Immigration Review

OMB No. 1615-0067, Expires 12/31/2016

I-589, Application for Asylum and for Withholding of Removal

START HERE - Type or print in black ink. See the instructions for information about eligibility and how to complete and file this application. There is **NO** filing fee for this application.

NOTE: Check this box if you also want to apply for withholding of removal under the Convention Against Torture. ☐

Part A.I. Information About You			
1. Alien Registration Number(s) (A-Number) (if any)		2. U.S. Social Security Number (if any)	
3. Complete Last Name		4. First Name	5. Middle Name
6. What other names have you used (include maiden name and aliases)?			
7. Residence in the U.S. (where you physically reside)			
Street Number and Name		Apt. Number	
City	State	Zip Code	Telephone Number ()
8. Mailing Address in the U.S. (if different than the address in Item Number 7)			
In Care Of (if applicable):		Telephone Number ()	
Street Number and Name		Apt. Number	
City	State	Zip Code	
9. Gender: ☐ Male ☐ Female		10. Marital Status: ☐ Single ☐ Married ☐ Divorced ☐ Widowed	
11. Date of Birth (mm/dd/yyyy)		12. City and Country of Birth	
13. Present Nationality (Citizenship)		14. Nationality at Birth	15. Race, Ethnic, or Tribal Group
		16. Religion	
17. Check the box, a through c, that applies: a. ☐ I have never been in Immigration Court proceedings. b. ☐ I am now in Immigration Court proceedings. c. ☐ I am not now in Immigration Court proceedings, but I have been in the past.			
18. Complete 18 a through c.			
a. When did you last leave your country? (mm/dd/yyyy)		b. What is your current I-94 Number, if any?	
c. List each entry into the U.S. beginning with your most recent entry. List date (mm/dd/yyyy), place, and your status for each entry. (Attach additional sheets as needed.)			
Date	Place	Status	Date Status Expires
Date	Place	Status	
Date	Place	Status	
19. What country issued your last passport or travel document?		20. Passport Number	21. Expiration Date (mm/dd/yyyy)
		Travel Document Number	
22. What is your native language (include dialect, if applicable)?		23. Are you fluent in English? ☐ Yes ☐ No	
		24. What other languages do you speak fluently?	
For EOIR use only.		Decision: Approval Date: _____ Denial Date: _____ Referral Date: _____	
For USCIS use only.		Action: Interview Date: _____ Asylum Officer ID#: _____	

Form I-589 (Rev. 12/09/14) Y

U.S. Immigration and Customs Enforcement ENFORCEMENT AND REMOVAL OPERATIONS

ERO Training



CASE DISPOSITION

Lesson Plan

Immigration Authority Delegation Program

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Signature

IADP Case Disposition
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Record of Changes

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9/10/2019	Modify			
11/11/2019	Modify			



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7/23/21	Modify			
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(b)(5)



LESSON DESCRIPTION

I. Lesson Title

Case Disposition

II. Program/Course Title

Basic Immigration Enforcement Training Program
Deportation Officer Training Program

III. Description

This lesson covers the various types of removal – removal proceedings under INA § 240, including voluntary departure and alternate orders of removal; reinstatement of a removal order under § 241(a)(5); administrative removal under § 238(b); expedited removal under INA § 235(b); other removals under the Visa Waiver Program, stowaways, crewmembers, S-nonimmigrant visas, distressed non-citizen/non-citizens, and non-citizen/non-citizens who are a threat to national security. The lesson is divided into four segments that can be delivered separately (but sequentially).

(b)(5)

IV. Terminal Performance Objective (TPO)

Given an non-citizen/non-citizen who is subject to removal, determine the process, procedures, forms, and form content so that the proper documentation is used for the required type of removal.

V. Enabling Performance Objectives (EPOs)

Segment 1

EPO 1: Outline the overall sequence of removal proceedings under § 240.

EPO 2: Determine the forms, content, and process for a removal under § 240 in accordance with the statutory requirements.

EPO 3: Recognize which non-citizens are ineligible for voluntary departure and identify the consequences and actions associated with an non-citizen failing to comply with the provisions of a Voluntary Departure order and the forms associated with a Voluntary Departure order.

(b)(5)

EPO 4: Distinguish between those non-citizens who are and are not entitled to a removal hearing.



Segment 2

EPO 5: Determine the forms, content, and process for reinstatement of a prior order of removal under § 241(a)(5) in accordance with statutory requirements.

Segment 3

EPO 6: Determine the forms, content, and process for an administrative removal under § 238(b) in accordance with the statutory requirements.

Segment 4

EPO 7: Determine the forms, content, and process for an expedited removal under § 235(b) in accordance with the statutory requirements.

EPO 8: Identify the removal procedures for administrative removal of: non-citizens entering under VWP, in accordance with § 217; crewmembers and stowaways; S-nonimmigrant visa holders; and distressed non-citizens under § 250; and non-citizens inadmissible on national security grounds under § 235(c).

(b)(5)

VI. Length of Lesson

For All Segments

EXPLANATION / DEMONSTRATION	PRACTICE	ASSESSMENT	TOTAL
8hours	Accompanying EAGLE blocks and Det Removability Lab	Final PE	8 hours



LESSON ADMINISTRATION

I. Lesson Title

Case Disposition

II. Risk Management

None

III. Facility Requirements

None

IV. Transportation Requirements

None

V. Required Staff

One ERO Academy qualified Instructor

VI. Academy-Provided Training Aids and Equipment

Case Disposition PowerPoint

VII. Student-Provided Equipment

For each segment, students should bring Student Guide, notes, and handouts from previous segments.

VIII. Student Handouts and Materials

- Case Disposition Student Guide

Note: Because students may use the forms packet as a go-by for the process to be followed, some forms are duplicated between segments.

- Handouts Segment 1: § 240 Removal Process
 - Flowchart illustrating § 240 process
 - When a Removal Order Becomes Administratively Final
 - I-213 Record of Deportable/Inadmissible Alien
 - I-862 Notice to Appear
 - I-826 Notice of Rights and Request for Disposition
 - I-200 Warrant of Arrest of Alien
 - I-265 Notice to Appear/Bond and Custody Processing Worksheet
 - I-286 Notice of Custody Determination
 - I-205 Warrant of Removal/Deportation Sample



- I-205 Sample Completed for Fara
 - I-294 Warning to Alien Ordered Removed or Deported
 - I-210 Voluntary Departure and Verification of Departure
- Handouts Segment 2: Reinstatement under § 241(a)(5)
 - Flowchart illustrating Reinstatement Process
 - I-215B Record of Sworn Statement in Affidavit Form
 - I-214 Warning as to Rights – Interview Log
 - I-877 Record of Sworn Statement in Administrative Proceedings]
 - I-871 Notice of Intent/Decision to Reinstate Prior Order
 - I-213 Record of Deportable/Inadmissible Alien
 - Previously executed I-205 Warrant of Removal/Deportation
 - Previously executed I-294 Warning to Alien Ordered Removed or Deported [or I-296 Notice to Alien Non-citizen Ordered Removed/Departure Verification]
 - I-205 Warrant of Removal/Deportation
 - I-294 Warning to Non-citizen Ordered Removed or Deported
 - Index of Record of Proceedings for Reinstatement
 - ROP Certification
 - EAGLE Screen Shots on Reinstatement
- Handouts Segment 3: Administrative Removal under § 238(b)
 - I-200 Warrant of Arrest
 - I-213 Record of Deportable/Inadmissible Non-citizen
 - Certified Conviction Documents
 - I-265 Notice to Appear/Bond and Custody Processing Worksheet
 - I-215B Record of Sworn Statement in Affidavit Form
 - I-877 Record of Sworn Statement in Administrative Proceedings
 - Index of Record of Proceedings for Administrative Removal
 - ROP Certification
 - I-851 Notice of Intent (NOI) to Issue a Final Administrative Removal Order
 - I-851A Final Administrative Removal Order
 - I-205 Warrant of Removal
 - I-294 Warning to Alien Removed or Deported
- Handouts Segment 4: Other Removals
 - I-867A Record of Sworn Statement Proceedings under Section 235(b)(1)
 - I-867B Jurat for Record of Sworn Statement in Proceeding Under Section 235(b)(1)
 - I-860 Notice and Order of Expedited Removal
 - I-296 Notice to Ordered Removed/Departure Verification
 - 71-058 Notice of Intent to Issue a Final Administrative Removal Order
 - 71-059 Record of Proceeding Visa Waiver Removal – Checklist
 - 71-057 Certification of Authenticity of the Records of Proceedings
 - 71-060 VWP Final Administrative Removal Order
 - 71-061 VWP Notice to Alien Ordered Removed/Departure Verification
 - I-589, Application for Asylum and for Withholding of Removal
[sample of form and overview]



IX. References

- ICE Policy Number 11009.1 – Strategic Use of Expedited Removal Authority
- Memorandum: Record of Proceedings in Reinstatement and Administrative Removal Cases (April 27, 2006)
- DOPPM Chapter 14: Removal Process: Non-Hearing Removal Cases
- DOPPM Appendix 14-1: Administrative Removal Proceedings Manual (M-430)
- 11059.1 Verifying Removability Prior to Removal
- Guidance on ICE Implementation of Policy and Practice Changes Recommended by the Department of Justice Inspector General, Mar. 30, 2004
- Record of Proceedings in Reinstatement and Administrative Removal Cases, April 27, 2006
- Expedited Removal Guidance, Sept. 14, 2004
- Immigration Enforcement Actions: 2010. Annual Report, June 2011
- Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens, Mar. 2, 2011
- Policy 11070.1 Visa Waiver Program Removals
- Guidance Relating to INA § 235(c): Removal of Aliens on Security and Related Grounds, May 14, 2007
- Case Disposition: Voluntary Departure lesson plan



Lesson Plan

Case Disposition

Segment 1: § 240 Removals

INTRODUCTION

I. Motivation

The statutes provide ICE with various legal tools to remove non-citizens who have entered the United States illegally, who are here legally but have violated the conditions of their status, or who present a danger to the safety of our communities. These tools are the forms and procedures that can be applied to the specific facts of a non-citizen's case.

You may be completing the forms yourself or reviewing a detainee's file to verify that it includes all the required documentation, properly completed and signed. This must be done before the detainee can be moved to the next step in the removal process.

Processing a case incorrectly has consequences: Transporting a non-citizen with an incomplete file could mean that the receiving office will refuse to accept custody. Processing a removal incorrectly can create delays and open the agency to a legal challenge of the removal – and open the officer to liability.

II. Objectives

A. Terminal Performance Objective (TPO)

Given a non-citizen who is subject to removal, determine the process, procedures, forms, and form content so that the proper documentation is completed for the required type of removal.

B. Enabling Performance Objectives (EPOs)

EPO 1: Outline the overall sequence of removal proceedings under § 240.

EPO 2: Determine the forms, content, and process for a removal under § 240 in accordance with the statutory requirements.

EPO 3: Recognize which non-citizens are ineligible for voluntary departure and identify the consequences and actions associated with a non-citizen failing to comply with the provisions of a Voluntary Departure order and the forms associated with a Voluntary Departure order.

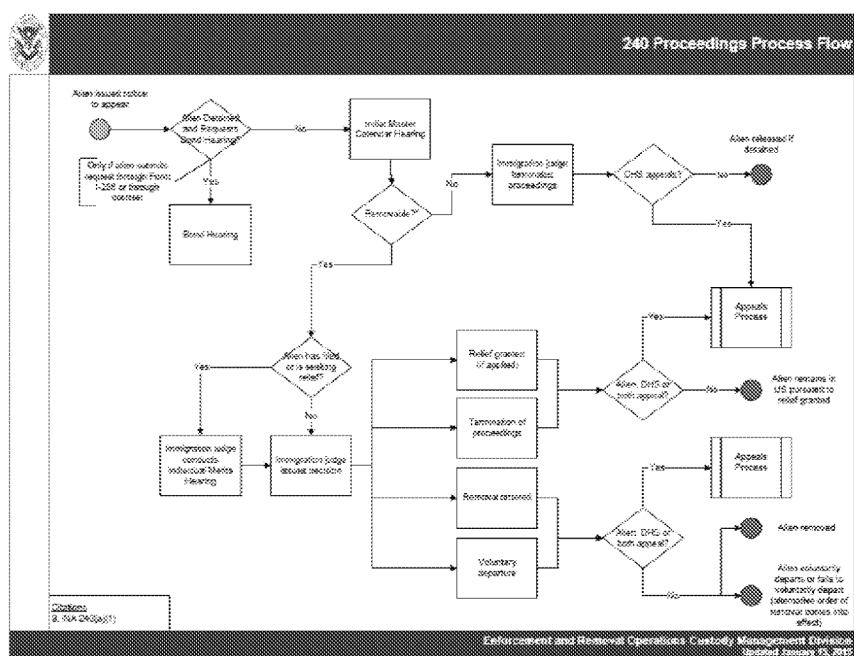
EPO 4: Distinguish between those non-citizens who are and are not entitled to a removal hearing.

(b)(5)



- What is a lawful permanent resident?
- Where is the individual's non-citizenage and removability documented?

IV. Main Idea



V. Agenda

- Segment 1:
 - High-level overview of the removal process
 - Forms, content, and process for removals under § 240
 - Which non-citizens are entitled to a removal hearing



- Segment 2: Forms, content, and process for reinstating a prior removal order in accordance with § 241(a)(5)
- Segment 3: Forms, content, and process for administrative removals under § 238(b)
- Segment 4: Procedures for other types of removal, including expedited removals under § 235(b) and removals under the Visa Waiver Program, § 217
- For each segment you will answer questions on the appropriate forms, content, and process for various scenarios.

VI. Handouts

The forms referred to in this lesson are included in the Student Guide. In addition, you will receive a separate packet of the same forms to make it simpler to refer to the forms during the lecture and while working through the questions.



Segment 1: § 240 Removals

INSTRUCTION

I. Explanation

A. EPO 1: Outline the overall sequence of removal proceedings under § 240.

Instructor Note: Remind students they are responsible for all material provided in their Student Guide. This includes the forms.

Refer to flowchart illustrating the § 240 process (which appears full size in the Student Guide).

1. Removal proceedings under INA § 240 are conducted with the Immigration Court (Executive Office for Immigration Review, EOIR), which is an office of the United States Department of Justice
2. Non-citizen is served with Notice to Appear (NTA), Form I-862, to appear before an immigration judge (IJ). Non-citizen may be detained during removal proceedings.
 - a. Removal proceedings are commenced by the filing of an NTA with the Immigration Court (EOIR). *(This information is covered in PowerPoint slide discussing I-862)*
3. Proceedings before IJ, who determines if non-citizen is amenable to removal based on charges on NTA – inadmissible under INA § 212; deportable under INA § 237
 - a. Proceedings can include master hearing(s) and/or merits hearing(s)
 - b. Non-citizen may apply for relief from removal

Instructor Note: Asylum is covered in the Special Status and Forms of Relief lesson.

- c. If ~~an~~ a non-citizen is detained, the non-citizen may seek a bond hearing – separate from removal proceedings
4. Master calendar hearing is a brief initial hearing where the IJ generally explains to the non-citizen the nature of the proceedings, the charges against the non-citizen, their rights (including their right to counsel at no cost to the U.S. government), takes pleadings (addressing the allegations and the charge(s) of removability), and identifies any relief from removal claims being made by the non-citizen.



Instructor & Student Note: The IJ may issue an order of removal during a master calendar hearing, but not if the non-citizen is seeking relief or is contesting the government's case.

5. During a merits hearing, the IJ considers all evidence, including documentary and testimonial evidence, on any contested issues involving removability and/or relief from removal.
 - a. Hearing on the non-citizen's removal is conducted in an EOIR courtroom (which could be located in a detention facility) or via video teleconference (often done for non-citizens incarcerated in a state or federal facility)
6. Non-citizen may be represented by counsel. Legal representation is not provided by the government.
 - a. The non-citizen receives a list of Free Legal Service Providers when he is initially charged, but this does not guarantee availability of free legal counsel.
 - b. Interpreter services for the hearing are provided, as needed, at government expense. Documents provided by the non-citizen in his case must be in English and translated at the non-citizen's expense.
7. Government attorneys present the government's case for removal, based on information from the I-213, the non-citizen's file, including charging documents, non-citizen's sworn statement (or unsworn declarations), conviction records, and other evidence.
8. Burden of proof is based on the charges:
 - a. If the non-citizen is charged under § 212 with being inadmissible, the non-citizen must prove admissibility.
 - b. If the non-citizen is charged under § 237 with being deportable, the government must prove deportability.

Instructor Note: Explain that most immigration hearings are not conducted with the same degree of formality that is typical of criminal proceedings. IJs may coach the non-citizen through the process and ensure that charges and options are fully understood.

9. The IJ may grant a continuance, as appropriate to the situation.
10. If the non-citizen does not appear for his scheduled hearing, the IJ can issue an order of removal in absentia.



- a. If non-citizen has a final order of removal in absentia, and a motion to reopen is filed with the immigration court an automatic stay of removal may be in effect
- b. An automatic stay means the non-citizen may not be removed by ICE until the IJ renders a decision on the motion to reopen.
- c. As there are different interpretations or policies in the field and decisions regarding motions to reopen, check with your local OPLA Chief Counsel Office for legal guidance regarding automatic stays for your specific jurisdiction.

B. EPO 2: Determine the forms, content, and process for removal under § 240 in accordance with the statutory requirements.

- 1. Removal under INA § 240 applies to the following types of non-citizens:
 - a. Alien is alleged to be inadmissible under § 212 or deportable under § 237 of the INA and does not fall into the category of aliens not entitled to a hearing.
 - b. Alien has been denied voluntary departure or return or is not eligible for voluntary departure.
 - c. Alien who has been granted asylee or refugee status and may be subject to removal
 - d. Alien has lawful permanent resident status; LPRs may only be removed through § 240 process.
- 2. Examples of aliens who may be placed in § 240 proceedings:
 - a. LPR who is convicted of a crime of violence, as defined in 101(a)(43)(F)
 - b. Alien present without admission who has been in the United States four months, has been arrested, but has no criminal convictions
 - c. A nonimmigrant who is in violation of his status
- 3. Record of Deportable/Inadmissible Alien, I-213
 - a. Document information from interview with subject and database checks on I-213.
 - 1) Biographical details and records checks are documented on form used to establish grounds for removal charge.
 - 2) Narrative should include:



- a) Method of encounter/location
 - b) Alienage and deportability/inadmissibility
 - c) Criminal history
 - d) Immigration status and pending petitions
 - e) Military service
 - f) Health and humanitarian aspects
 - g) Funds in subject's possession
- 3) Alien has been advised of communication privileges with their consulate or embassy
- 4) Officer's signature and disposition
- 5) Supervisor's signature
- 4. Notice of Rights and Request for Disposition, I-826, informs the non-citizen of his right to a hearing before Immigration Court or the option of returning to his country without a hearing.
 - a. Also allows non-citizen to state that he believes he faces harm if repatriated. [The term "repatriation" means to send (someone) back to their own country.]
 - b. Should be signed by non-citizen with one option initialed.
 - c. Requires a certification of service signed by immigration officer and interpreter
- 5. File Warrant of Arrest of Alien (I-200).
 - a. Requires issuing officer to indicate the basis for determination that there is probable cause that non-citizen is removable
 - b. Administrative warrant issued when a subject is taken into custody prior to the non-citizen being issued a removal order
 - c. Signed by SDDO or higher
 - d. Certificate of service signed by serving officer and noting the language used to read warrant to non-citizen
 - 1) Include name or number of interpreter, if one was used
- 6. Notice of Custody Determination, Form I-286:
 - a. Informs the subject whether he is to be:
 - 1) Detained in ICE custody
 - 2) Released on bond



- 3) Released on personal recognizance
- 4) Released under other conditions

Instructor Note: Example of a release “under other conditions.” Non-citizen released on either OREC or bond may have an additional requirement to adhere to the Alternatives to Detention Program.

- b. Minimum amount for a custody (delivery) bond is \$1,500 –INA 236(a)(2)(A)
- c. Non-citizen should check appropriate box on whether he wants to request an immigration judge review of this custody determination

Instructor Note: For example, on I-286 SDDO grants \$10,000 bond. Non-citizen requests a review of this custody determination by the IJ. Upon initial hearing, IJ determines a lower bond amount of \$5,000.

- d. Form must be signed by subject and by supervisor (SDDO, or higher), and served by the officer
- e. Must be served **within 48 hours** of subject being taken into ICE custody. Date and time of service is noted on form.

Instructor Note: Note that one practice is to print the non-citizen’s fingerprint on the I-862 to help verify the identity of the person on whom the NTA was served.

7. Notice to Appear (NTA), I-862

- a. I-862 includes:
 - 1) Non-citizen’s name, address, phone number, and A-File number
 - 2) A description of the allegations against the non-citizen and the provision of law under which the non-citizen is charged
 - a) Selection is to be made about the non-citizen:
 - (1) You are an arriving alien
 - (2) You are an alien present in the United States who has not been admitted or paroled, or
 - (3) You have been admitted to the United States, but are removable for the reasons stated below.



- b) Two allegations establish non-citizenship (not a USC; national and citizen of _____).
 - c) Method of entry or admission
 - d) Specific INA 212 or 237 charge(s)
- 3) Date, time, and location of the removal hearing
- 4) Notice to the non-citizen of a right to representation at the non-citizen's expense
- 5) Notice that if the non-citizen fails to attend the hearing, his removal will be ordered. This is order in absentia.
- 6) Notice that the non-citizen must notify the immigration court of any changes to their address or telephone number within five working days of a change using a form EOIR-33. If non-citizen is not held in detention, notices regarding hearings and requests for interview with ICE are sent by mail. *[Pertains only to non-detained non-citizens]*
- 7) Signed by serving officer showing the manner and language in which the Notice was served. Also signed by non-citizen
- c. I-862 must be issued by SDDO or above (Issuing Officer).
- 8. Provide non-citizen with List of Free Legal Service Providers, located at the EOIR website [www.justice.gov/eoir/free-legal-services-providers], along with the I-862.
- 9. Certain documents must be filed promptly after taking custody of non-citizen.
 - a. NTA (I-862) must be served **on the non-citizen within 48 hours** of the non-citizen coming into ICE custody
 - b. Notice of Custody Determination (I-286) must be served **within 48 hours** of subject being taken into ICE custody
 - c. For non-citizens detained in ICE custody, the agency will submit the NTA to EOIR within 5 working days of the NTA being served on the non-citizen, or upon the non-citizen entering ICE custody, whichever is later.

Instructor Note: Per memo 1/11/2005 ICE Transportation, Detention and Processing Requirements, "The arresting office is responsible to ensure all non-citizens in ICE custody are served with appropriate processing papers that will facilitate the most expedient removal process (i.e. stipulated removal, reinstatement, administrative,



expedited, notice to appear) as soon as possible after being taken into custody, but no longer than forty-eight (48) hours in the absence of exceptional circumstances."

Policy 11022.1 Section 5.1 Detainee Transfers states 5 days to serve NTA on EOIR.

Student Note: All documents, including I-862 and I-286, should be served when initially processing the non-citizen as soon as the non-citizen comes into ICE custody. It should not be a matter of practice to delay service until the deadline for each form unless ERO management determines the circumstances in the case warrant.

10. Removal proceedings are initiated when an NTA, I-862, is filed with the immigration court (EOIR)
 - a. Once the NTA is served on the EOIR, the master calendar initial hearing cannot take place sooner than 10 days from the service date unless the non-citizen requests an expedited hearing and signs the appropriate field on the NTA.
11. Notice to Appear/Bond and Custody Processing Worksheet, I-265
 - a. Presents factors that allow immigration official to set bond
 - 1) Form does not grant bond – only the factors that were taken into consideration when bond was set
 - b. Details the allegations as listed from the NTA – primarily used to determine legal sufficiency to support charges
 - c. Describes specific situations that argue for or against release, such as:
 - 1) Whether an application for relief is pending
 - 2) Any prior record of bonding or breach of bond
 - 3) Health factors, time in United States, personal property, family in United States
 - d. Recommendation by officer either for voluntary departure or for issuing a Notice to Appear
 - e. Signed by ICE counsel approving legal sufficiency of charges listed on NTA
 - f. Must be signed by supervisor – SDDO or higher

Instructor Note: I-265 is never served on the non-citizen but is housed in the A-file for internal documentation. The Risk Classification Assessment (RCA) provides recommendations on bond and custody determination. RCA is discussed during the EADM lesson.



I-265 can be confusing for students. This form does not grant bond – that document is the I-286. This form is not the charging document – that document is the I-862. I-265 summarizes the information on the other forms.

12. Typically, the I-862, I-826, and I-286 are all served at the same time.
 - a. All must be complete, including any conviction records if required for case

Instructor Note: Tip to remember – In processing cases for § 240 removal, use this collection of forms: I-286, I-862, and I-826. This particular combination of forms is never used for non-hearing removal cases.

Note that the order in which the forms/processing is done varies based on factors such as availability of information and circumstances of the case. In many cases they are prepared essentially simultaneously.

13. If OPLA attorney presenting removal case determines inadmissibility or deportability charges need amending, the OPLA attorney files an Additional Charges of Inadmissibility/Deportability form (I-261) with the EOIR to supplement the charges on the NTA.
14. Processing for a **stipulated removal** under § 240 – see § 240(d) and 8 CFR 13.25(b) – Non-citizen concedes removability and waives a hearing. Under certain conditions non-citizens who are entitled to INA 240 Removal Proceedings may make a “Stipulated Request for Order, Waiver of Hearing” per 8 CFR 1003.25(b)

Instructor Note: Explain that not all IJs or immigration courts may allow stipulated removals. IJ may want to ensure that non-citizen who is entitled to hearing has it.

- a. File Notice to Appear (I-862)
- b. Provide List of Free Legal Service Providers.
- c. Non-citizen must agree to these provisions:
 - 1) Admit that the factual allegations in the Notice to Appear are true and correct.
 - 2) Concede that he is deportable or inadmissible as charged.
 - 3) Make no application for relief (no claim of asylum or any other benefit).
 - 4) Designate a country for removal



- 5) Acknowledge in writing that he understands the consequences of a request for a stipulated removal and enters the request voluntarily, knowingly, and without any duress from the government.
 - 6) Sign a statement that he will accept a written order of removal as final disposition and waive any appeal of that order.
 - d. These are incorporated in a request for stipulation (using a local form).
 - 1) I-862 and request for stipulated removal is filed with EOIR
 - e. File Warrant of Arrest of Non-citizen, I-200
 - f. Serve Notice of Custody Determination (I-286) on subject.
 - 1) "Detained in custody" box must be checked.
 - 2) "I do not request a redetermination..." box must be checked.
 - g. Notice of Rights and Request for Disposition (I-826), must be signed with "I admit" box checked.
 - h. OCC must review and agree to filing the stipulated request for removal. After filing with the EOIR the IJ must accept and agree to stipulation.
 - i. IJ then issues final order of removal.
 - j. Warrant of Removal/Deportation (I-205) is signed by FOD or designee
 - k. Not all IJs will issue stipulated orders of removal. Consult with your OCC about the policy on filing requests for stipulated removal orders in your field office.
15. Hearing outcomes: After hearing the presentation of both the non-citizen's and the government's case, the IJ issues an order that can have one of these outcomes:
 - a. Proceedings are terminated
 - b. Non-citizen is found removable and is ordered removed.
 - c. Non-citizen is found to be subject to removal and is granted voluntary departure (VD) by the IJ with an alternate order of removal should the non-citizen not abide by the VD grant.



- d. Case may be administratively closed. A case may be administratively closed because of a pending USCIS application, a technical error, prosecutorial discretion exercised by the court, if an non-citizen is in the custody of another law enforcement agency, etc. The onus is on ICE to re-calendar the case should the administratively closed case need to be reopened.
 - e. Non-citizen is found removable and is granted other discretionary relief, such as:
 - 1) A grant of Withholding of Removal or Deferral of Removal under the Convention Against Torture (DCAT) – means the non-citizen has proven a well-founded fear of persecution or torture if removed to a specific country
 - 2) Asylum – If non-citizen is claiming fear, this will be handled by the IJ, who shall have exclusive jurisdiction over asylum applications filed by an non-citizen who has been served a Notice to Appear (I-862), after the charging document has been filed with the Immigration Court – 8 CFR 208.2(b)
 - 3) Cancellation of Removal
16. The IJ's decision may be appealed by either the government (OCC/OPLA) or the non-citizen or both:
- a. First level is to Board of Immigration Appeals (BIA) – appeal must be filed within 30 days of the IJ's order. BIA can dismiss appeals, remand the case back to the IJ for further consideration, or conclude a decision in writing explaining the decision.
 - b. Second level is judicial review by U.S. Circuit Court of Appeals. Petition for Review must be filed within 30 days of BIA's decision.
17. Non-citizen may request stay of removal from EOIR or BIA in conjunction with either of the following:
- a. Motion to Reopen – to allow presentation of evidence that was not previously available, filed within 90 days of the IJ or BIA order, **or**
 - b. Motion to Reconsider – request that IJ or BIA reconsider its decision based on precedent decision, filed within 30 days of the order.
18. Timelines for filing do not apply in Motions to Reopen on cases where the final order is in absentia

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19. Travel documents to the non-citizen's country of origin, country of last residence, or the country where the non-citizen was ordered removed must be obtained from that country's consulate.
 - a. If travel documents cannot be obtained for detained non-citizen within 90 days, case gets post-order custody review.
 - b. Non-citizen may also designate another country for removal. Destination country must agree to accept the non-citizen by the issuance of travel documents.
 - c. If unable to be removed at that time, and if non-citizen is being released, the non-citizen must be placed under an Order of Supervision (OSUP).

Instructor Note: Post order custody review, release under OSUP, acquisition of travel documents, and the process of repatriation (including transporting the non-citizen by air to his home country) are covered in subsequent lessons.

20. An order of removal carries with it a bar to legally applying to reenter the United States – 5 years, 10 years, 20 years, or permanently, depending on the section of the law.

Instructor Note: A chart addressing when order of removal becomes final is included in the POCR lesson because date of final order becomes Day 1 of 90-day removal period.

21. Removal can occur when the order of removal becomes final (note that these are examples of some of the final order situations):
 - a. Final order of removal by the IJ where non-citizen waived appeal rights.
 - b. Final order of removal by the IJ where the non-citizen reserves right to appeal, but does not file the appeal within 30 days
 - c. Final order of removal by the IJ where non-citizen reserved right to appeal, files an appeal, and then the BIA dismisses the appeal.

Instructor Note: A summary of the various types of orders and when each becomes final is covered in POCR.

22. Once 240 proceedings are completed:
 - a. Order of removal or grant of relief is issued by IJ. Written copy is provided for A-File.
 - b. Warrant of Removal/Deportation, I-205 is issued.



- 1) Form is served after the IJ decision becomes final and is signed by FOD, or designee
 - 2) Form is also used to verify the departure of the non-citizen.
 - 3) Includes non-citizen's photo and right index fingerprint
 - 4) Signatures of officer(s) doing fingerprinting and witness to departure
- c. Warning to Non-citizen Ordered Removed or Deported, I-294
- 1) Outlines the time period non-citizen is prohibited from applying to legally reenter the United States – 5, 10, 20 years or permanently
 - 2) Served along with I-205

C. EPO 3: Recognize which non-citizens are ineligible for voluntary departure and identify the consequences and actions associated with an non-citizen failing to comply with the provisions of a Voluntary Departure order and the forms associated with a Voluntary Departure order.

1. Most non-citizens who are present in the United States and who are subject to 240 removal proceedings are eligible for voluntary departure, with these exceptions. Non-citizens who:
 - a. Are aggravated felons or terrorists and are deportable under INA § 237(a)(2)(A)(iii) or § 237(a)(4)(B)
 - b. Were previously granted voluntary departure after April 1, 1997
 - c. Violated terms of voluntary departure in the past 10 years
 - d. Are classified as "arriving non-citizens" (this can include LPRs who left the U.S. and are returning)

Instructor Note: Direct students to locate Form I-210 in the Student Guide and ask them to follow along.

2. If voluntary departure is granted by either the Field Office or Immigration Judge, complete an I-210 Voluntary Departure and Verification of Departure
 - a. Complete non-citizen's name, address, phone, A-number, and FINS number.
 - b. DO will complete the information indicating the date VD was granted, authority granting VD (IJ, BIA, ERO), expiration of VD,



- and departure type (at non-citizen's expense, government expense, under safeguards).
- c. If the non-citizen is granted an extension of the period of voluntary departure (not to exceed either 120 days if VD is granted prior to the conclusion of proceedings, or 60 days if VD granted at the conclusion of proceedings).
 - d. Provide details of manner of departure (transport details).
 - e. Non-citizen and DO sign form.
 - f. Attach photo of non-citizen and take non-citizen's right index fingerprint.
 - g. Two originals are prepared – one for non-citizen, one for A-File.
 - h. At departure, ERO escort (if VD granted "under safeguards") compares photo and fingerprint on I-210 presented by non-citizen to non-citizen's passport or other identity documentation and signs form.
 - 1) If unescorted, departure can also be verified using outbound records in DHS databases like ATSP and TECS MOD.
 - 2) Non-citizen without escort must present I-210 to an immigration officer at point of departure or to U.S. Embassy in home country to verify departure
 - i. The I-210 provides official evidence of departure from the U.S.
3. Anytime an IJ grants voluntary departure, an alternate order of removal is also issued, which will go into effect if the non-citizen fails to depart or fails to comply with any of the conditions of Voluntary Departure ordered by the Immigration Judge.
4. Failure to depart under a VD grant by the IJ
- a. If non-citizen fails to depart on or before the date specified in the order, alternate order of removal becomes effective. If non-citizen is removed under order of removal, he or she is subject to 10-year bar to apply for admission.
 - b. Non-citizen is considered "fugitive" by ICE – that is, an non-citizen who has failed to leave the U.S. following the issuance of a final order of removal.
5. If the agency exercises the right to deny voluntary departure, or the non-citizen violates the terms of the voluntary departure in lieu of proceedings,



an NTA is issued and the non-citizen is placed in 240 removal proceedings

6. Departure deadlines and extension granted by the agency (FOD)
 - a. If the IJ grants voluntary departure prior to the conclusion of proceedings under INA 240B(a), statutory maximum period to depart is 120 days.
 - b. If the IJ grants voluntary departure at the conclusion of proceedings under INA 240B(b), statutory maximum period to depart is 60 days.
 - c. If non-citizen was not granted the statutory maximum time to depart, ICE may extend the expiration, but not to exceed the maximum period, if non-citizen proves need and provides evidence of intent to depart.
 - d. Decision by the agency on extension must be rendered quickly because the non-citizen is subject to serious penalties for failing to depart by the specified date.

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D. EPO 4: Distinguish between those non-citizens who are and are not entitled to removal proceedings.

1. In accordance with the Fourteenth Amendment, INA § 240 outlines removal hearing procedures before an IJ, the various levels of appeal, and possibilities for relief
2. Several categories of non-citizens are not entitled to 240 removal hearing before an IJ and are precluded from certain forms of relief that are only available in immigration court.
 - a. If an non-citizen falls within one of the classes not entitled to a hearing, removal under these procedures carries the same consequences as a removal order issued in an immigration court.
 - b. Because a removal hearing and appeal are not available to these individuals, the removal is faster and requires fewer resources.

Instructor Note: Discuss with students that it can take years for an non-citizen (even one who is detained) to fully go through 240 Removal Proceedings. 240 Removal hearings take time to examine relief requests, may involve court case continuances, and the appeals process can be very lengthy. Deportation Officers should place non-citizens in proper proceedings to effect the removal the most expeditious manner in order to limit the government resources required for the case. Those proceedings listed in EPO 3 (non-citizens who are not entitled to removal proceedings) are generally faster ways of removing an non-citizen than in 240 Removal Proceedings.



3. Non-citizens not entitled to a hearing are those subject to removal under the following sections of the INA:
 - a. Non-citizens subject to reinstatement of a previously issued removal order under § 241(a)(5)
 - b. Non-citizens subject to administrative removal under § 238(b) – Expedited Removal of Aggravated Felons

Instructor Note: In the field and elsewhere in this lesson, this is referred to as an Administrative Removal. In the law, it is Expedited Removal of Aggravated Felons.

- c. Non-citizens subject to expedited removal under § 235(b)
 - d. Non-citizens subject to removal under § 217, the Visa Waiver Program
 - e. Crewmembers, under § 252(b); stowaways, under § 235(a)(2) and 241(d)
 - f. Non-citizens falling into distress and requesting removal at U.S. expense (§ 250)
 - g. Non-citizen witnesses or informants holding an S-5, S-6, or S-7 nonimmigrant visa (8 CFR 236.4)
 - h. Non-citizens inadmissible on national security grounds (§ 235(c))
4. Non-citizen who is entitled to a hearing in 240 removal proceedings may waive the right to a hearing before the IJ and agree to stipulated order of removal
5. In addition to those non-citizens not entitled to a removal hearing, many non-citizens waive their right to a formal hearing and elect, instead, to voluntarily return to their home country. Such voluntary return or voluntary departure is not a removal and does not include the same bars to legal reentry.

(b)(5)

Instructor Note: This lesson focuses on the process of removal when the non-citizen is not eligible for or does not request voluntary departure. The asylum process is covered in another lesson.

Note that in many situations, the ERO Officer will be able to determine charges against the non-citizen and which section of the INA applies based on records checks before the officer ever arrests the non-citizen. In that case, most processing is completed in advance.



II. Demonstration

Instructor Note: Refer students to Antonio Romano scenario and walk through preparing the forms for this case.

Demonstration 1: Antonio Romano

You learn that a state penitentiary inmate named Antonio Romano is to be released after serving a five-year sentence for robbery. An immigration detainer has been lodged, and the following information is given on the I-213.

(b)(5)

Subject information

Name:	Antonio Romano
Date of Birth:	June 23, 1965
Place of Birth:	Rome, Italy
Mother's Name:	Marisa Rossi
Mother's DOB:	January 7, 1946
Mother's Place of Birth:	Potenza, Italy
Father's Name:	Allesandro Romano
Father's DOB:	December 6, 1943
Father's Place of Birth:	Torino, Italy
Date Subject Entered United States:	May 5, 2003
Location Subject Entered United States:	Detroit, Michigan airport
Reason for coming to the United States:	Married to USC and entering to live with his wife
Status at entry:	IR1/ immigrant
Address in United States:	112 ½ Beacon St., Boston, MA
Citizenship:	Italian

In May 1998, Romano met Nyota Fujioka, a USC who was studying in Italy. They married in Italy in May 2000 and moved to the United States in June 2003, when she took a management position with a multinational firm with offices in Boston.

Seven years ago, Romano was running short of money and wanted a gift for his wife, so Romano robbed a pub in Boston, MA, getting a total of more than \$7,000. Romano was arrested and charged with robbery. He was ultimately convicted and sentenced to five years in prison and is to be released soon.

1. Is Romano subject to removal from the United States? Why or why not?



Yes – conviction for aggravated felony.

2. If so, is he subject to removal under § 240?

Yes – as an LPR, he must have a hearing.

3. Can any Deportation Officer issue a Notice to Appear?

No – issuing officer must be SDDO or above.

4. Copies of the conviction documents were not available when the Deportation Officer took custody of Romano. How long can ICE have Romano in custody before it must serve an NTA on him?

48 hours

5. Who has the burden of proof in this case – the non-citizen or the government?

The government, because he is being charged as deportable

6. If the IJ orders Romano's removal after a complete hearing where Romano was present, under what conditions could he file a Motion to Reopen?

Only if there were new facts in the case to be introduced

7. What forms and other information are needed to begin the removal process in this case?

- **I-213 with full narrative, charges, and recommendation**
- **I-862 Notice to Appear**
- **I-200 Warrant of Arrest**
- **I-826 Notice of Rights / Request for Disposition - Not eligible for voluntary departure**
- **List of Free Legal Service Providers**
- **I-265 Notice to Appear/Bond and Custody Processing Worksheet**
- **I-286 Custody Determination**

The ERO Officer must also include copies of the non-citizen's conviction document, photos, fingerprints, and passport if available.

Demonstration 2: Miguel Garcia

Miguel Garcia was arrested on a shoplifting charge. In an interview, he acknowledged that he came to the United States from Mexico three weeks before and was present without admission. Searches in EAGLE and NCIC found no previous record. Garcia was issued an NTA and was detained by ICE. At Garcia's Master Hearing, he was granted Voluntary Departure by the IJ and was given 30 days to depart the country. Along with his VD order, the Judge also issued an Alternate Order of Removal. Garcia failed to depart the country and his VD order expired.



1. What factors allowed Garcia to be eligible for voluntary departure?

Garcia was not subject to removal under 237(a)(2)(A)(iii) or 237(a)(4)(B); had no prior grant of voluntary departure; has not violated the terms of voluntary departure in the past 10 years; is not classified as an arriving non-citizen.

2. Which form is used to verify the Voluntary Departure of Garcia?

I-210 Voluntary Departure and Verification of Departure

3. What happened when Garcia failed to depart within the 30-day departure period?

The day after the VD order expired, the Alternate Order of Removal took effect and Garcia became a Final Order of Removal with a 10 year bar to re-entry.

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III. Student Practice

Felipe Sandoval was arrested by the Podunk County Sheriff on disorderly conduct and simple assault following a bar fight involving Zeta gang members (his associates) and other bar patrons. He says he is a lawful permanent resident, originally from Guatemala, who works as a window installer for Podunk Windows. Database searches find convictions within the past five years for domestic assault (sentenced to counseling plus restraining order), DWI, aggravated assault (sentenced to six months), sexual misconduct (one year with six months suspended).

1. If Sandoval is subject to removal from the United States, may he be placed in 240 proceedings? Why or why not?

Amenable to removal under § 240 proceedings because he is an LPR but is removable based on multiple, separate convictions and their associated sentence lengths.

2. What documentation must be completed to begin the removal process?

- *I-213 with full narrative, charges, and recommendation*
- *I-862 Notice to Appear*
- *I-826 Notice of Rights / Request for Disposition*
- *List of Free Legal Service Providers*
- *I-265 Notice to Appear/Bond and Custody Processing Worksheet*
- *I-286 Custody Determination*
- *I-200 Warrant of Arrest*

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IV. Feedback and Remediation

Provide feedback to students that explains why their answers and explanations are correct or incorrect. Provide additional examples to clarify any misconceptions.



CONCLUSION

I. Summary of Main Ideas

The basic process for removal is under § 240, which provides a non-citizen a hearing before an IJ, who may order the non-citizen's removal, allow voluntary departure, grant relief from removal, or terminate the proceedings.

The § 240 removal process is initiated when the Notice to Appear (NTA), I-862, is filed with EOIR. Other forms that must be used are Notice of Rights and Request for Disposition, I-826, and Notice of Custody Determination, I-286, along with Warrant of Arrest, I-200, and Bond and Custody Worksheet, I-265. Once there is a final order of removal, Warrant of Removal/Deportation, I-205, and Warning to Non-citizen Ordered Removed or Deported, I-294 are served on the non-citizen.

Most non-citizens subject to 240 removal proceedings are eligible for voluntary departure. Exceptions include: aggravated felons or terrorists, arriving non-citizens, non-citizens previously granted VD or violated VD terms in past 10 years. An alternate order of removal is issued by the IJ along with the grant of VD. Maximum time allowed for departure is 60 or 120 days, depending on when in proceedings VD is granted.

The INA provides for non-hearing removal of non-citizens subject to removal under:

- § 241(a)(5) – Reinstatement of removal order
- § 238(b) – Expedited removal of aggravated felons
- § 235(b) – Expedited removal
- § 217 – Visa Waiver Program
- § 252(b) – Crewmen
- § 235(a)(2) – Stowaways
- § 250 – Falling into distress
- 8 CFR 236.4 – Non-citizen witnesses or informants holding S-5, S-6, or S-7 visas
- § 235(c) – Non-citizens inadmissible on national security grounds

II. Integration

Although processing under § 240 is the principal means of handling a removal, there are specific conditions under which a non-citizen is not entitled to a hearing and can be given an order of removal by an authorized ICE officer. These will be discussed in the segments of this lesson that follow.

III. Objectives

You should now be able to:

- Outline the overall sequence of removal proceedings under § 240.
- Determine the forms, content, and process for removal under § 240 in accordance with the statutory requirements.
- Recognize which non-citizens are ineligible for voluntary departure and identify the consequences and actions associated with a non-citizen failing to comply



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with the provisions of a Voluntary Departure order and the forms associated with a Voluntary Departure order.

- Distinguish between those non-citizens who are and are not entitled to a removal hearing.

IV. Test or Final Activity

This information will be tested in the Activity Prep Exam and Final Practical Exercise



Segment 2: § 241(a)(5) Reinstatement of Removal Orders

INTRODUCTION

I. Motivation

A key priority for ICE enforcement is the removal of non-citizens who obstruct immigration controls, including non-citizens who reenter the country illegally after removal.

II. Objectives

A. Terminal Performance Objective (TPO)

Given an non-citizen who is subject to removal, determine the process, procedures, forms, and form content so that the proper documentation is used for the required type of removal.

B. Enabling Performance Objective

EPO 4: Determine the forms, content, and process for reinstatement of a prior order of removal under § 241(a)(5), in accordance with statutory requirements.

III. Review of the Past

1. Under what situations is an non-citizen who is subject to removal not entitled to a hearing before an IJ?

- *Non-citizens subject to expedited removal under INA § 235(b)*
- *Non-citizens subject to administrative removal under INA § 238(b)*
- *Non-citizens subject to administrative removal under INA § 217*
- *Non-citizens subject to reinstatement of a previously-issued removal order under INA § 241(a)(5)*
- *Crewmembers (§ 252(b)) and stowaways (§ 235(a)(2) and 241(d))*
- *Non-citizen witnesses or informants holding S-5, S-6, or S-7 nonimmigrant visas (8 CFR 236.4)*
- *Non-citizens falling into distress and requesting removal at U.S. expense (§ 250)*
- *Non-citizens inadmissible on national security grounds under § 235(c)*

2. What set of three forms is used only for a § 240 removal process?

- *I-862: Notice to Appear (NTA)*
- *I-826: Notice of Rights and Request for Disposition*
- *I-286: Notice of Custody Determination*

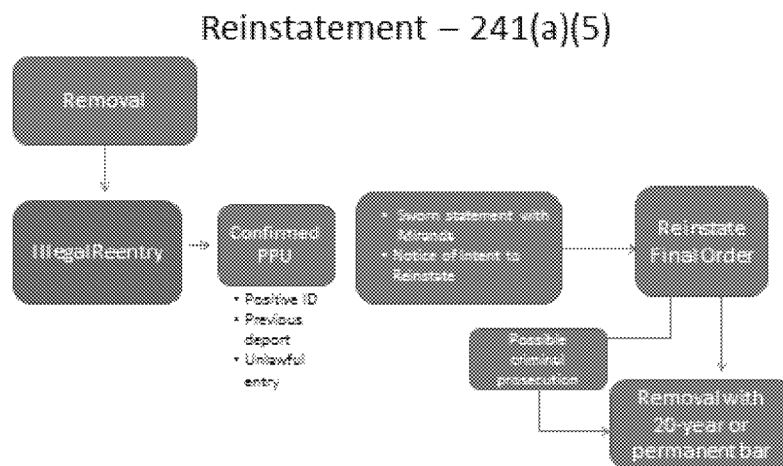
(b)(5)



3. What is an I-205?

Final order of removal (Warrant of Removal/Deportation) issued by FOD or designee after 240 proceedings.

IV. Main Idea



This flowchart illustrates the process of reinstatement of a prior removal order under § 241(a)(5) of the INA where an non-citizen who has been removed and then illegally reenters the U.S. If that individual is apprehended and his identity confirmed, he will be placed in a non-hearing removal process, reinstating the original removal order. He may also subject to criminal prosecution for the offense of illegally reentering the country (8 USC 1326).

V. Agenda

- Forms, content, and process for reinstatement of a prior order of removal under § 241(a)(5)
- Questions on the appropriate forms, content, and process for various scenarios



INSTRUCTION

I. Explanation

A. EPO 4: Determine the forms, content, and process for reinstatement of a prior order of removal under § 241(a)(5), in accordance with statutory requirements.

1. Applies to an non-citizen who:
 - a. Illegally reenters the United States after being deported, excluded, or removed under a final order with a bar to reentry
 - b. Illegally reenters the United States after leaving the country of his own free will while under a final order of removal.
 - c. Illegally reenters the United States after leaving the country of his own free will and after the expiration of an IJ-granted voluntary departure period. (The voluntary departure alternate order of removal has become a final order.)
2. Does **not** apply to:
 - a. An non-citizen who was granted voluntary departure, left the United States in compliance with that grant, and then illegally reenters the United States.
 - b. An non-citizen who reenters legally after waiting until the bar to reentry expires and then is again found deportable.

Instructor Note: Note that identity of subject must be confirmed through use of fingerprints: PPU = Positive identification, Previous deport, Unlawful entry.

Because with a reinstatement the subject's case is not referred to an IJ, ERO Officers must evaluate all available evidence before determining that an non-citizen was previously removed and illegally reentered the United States.

Many jurisdictions require that all reentry cases be referred to the AUSA for prosecution and/or declination of prosecution and subsequent TECS case management duties.

Emphasize the importance of ensuring that the ROP is complete. Refer to Memorandum: Record of Proceedings in Reinstatement and Administrative Removal Cases (April 27, 2006).

3. Processing of reinstatement under § 241(a)(5) – in accordance with 8 CFR 241.8.



- a. To process an non-citizen under § 241(a)(5), ERO Officer must clearly establish:
 - 1) **Positive identity:** The non-citizen's identity, matched to an order of removal
 - 2) **Previous removal:** That the non-citizen was previously excluded, deported, or removed or that he left while subject to a final order of removal
 - 3) **Unlawful entry:** That the non-citizen did in fact reenter illegally
- b. If there is any question regarding these three factors, the non-citizen must be processed for removal under another applicable section: § 240 proceedings; § 238 administrative removal (if aggravated felony); or other appropriate section.
- c. Document on I-213 if the subject admits to having been previously excluded, deported, or removed.
- d. Obtain subject's A-File, or needed documents inside the file, and verify the subject's identity with IDENT/IAFIS and other records checks.
- e. A-File should contain the previously executed Warrant of Removal/Deportation (I-205) and Warning to Non-citizen Ordered Removed or Deported (I-294) or Notice to Non-citizen Ordered Removed/Departure Verification (I-296).
 - 1) Also must include the final order for which the non-citizen was previously removed. ERO officers may be reinstating other removal orders other than IJ order (I-860, I-851A, etc.)
 - 2) Previously issued I-205 provides authority to detain.
- f. Interview the subject (using an interpreter if necessary) and record the subject's statement on the Record of Sworn Statement in Affidavit Form, I-215B, or Record of Sworn Statement in Administrative Proceedings, I-877.

Instructor Note: Refer students to I-215B and I-877 in Student Guide.

- 1) Because the I-215B may be used for criminal prosecution, Miranda warning must be given.
- 2) If the subject declines to make a statement, that information is recorded.



- 3) An ERO Officer conducting an interview with the subject may use Warning as to Rights – Interview Log, I-214, if pursuing a criminal case (the form includes a provision entitling individual to representation if he cannot afford it).DI
- g. Sworn statement must include this question and the non-citizen's response to it: "Do you have any fear of persecution or torture should you be removed from the United States?"
(8 CFR 1208.31 – Reasonable fear of persecution or torture determinations involving non-citizens ordered removed under section 238(b) of the Act and non-citizens whose removal is reinstated under section 241(a)(5) of the Act)

(b)(5)

Instructor Note: A brief overview of asylum and withholding of removal and a portion of the I-589 used to request these forms of relief are included at the end of the Student Guide. The topic is covered in more detail in the Special Status and Forms of Relief lesson.

- 1) Non-citizen in removal under 241(a)(5) is not eligible for asylum but must be referred to asylum officer for reasonable-fear interview. While they are statutorily ineligible for asylum they may be eligible for Withholding of Removal or Deferral of Removal Under the Convention Against Torture.
- 2) If reasonable fear is found by the asylum officer, the asylum officer refers case to the IJ for fear-only proceedings to adjudicate withholding or deferral of removal under Convention Against Torture claims. If reasonable fear is not found by the asylum officer the non-citizen may still choose to have the IJ review the fear claim.
 - a) IJ reviews fear claim only.
 - b) Withholding or deferral of removal are country specific.
 - c) An non-citizen granted withholding of removal or deferral of removal under the Convention Against Torture is not given relief from removal. The non-citizen can be removed to an alternate country.
- h. Prepare Notice of Intent/Decision to Reinstate Prior Order, I-871.
 - 1) Subject is asked to acknowledge receipt of the form and to indicate whether he wishes to contest the determination.
 - 2) Subject may present information to rebut the determination and can review the government evidence.



- 3) SDDO or higher reviews the information and determines whether further evaluation or investigation is warranted.
 - 4) If the decision is to reinstate the removal order, the SDDO or higher signs the bottom of the I-871.
 4. In addition to reinstatement of removal charge, non-citizen may also be subject to criminal prosecution for reentering the U.S. in violation of the order. An ROP must be created.
 - a. ROP is intended to allow the case to be defended in federal court.
 - b. ROP is compiled and stored in the A-File:
 - 1) Same documents are required for the A-File and kept on the left-hand side, distinguishing them from administrative forms, which go on the right side of the A-File.
 - 2) Recommended that two or more signed originals are made of forms for ROP and A-File and duplicates are identified as "duplicate original."
 - 3) ROP documents can then be removed and provided for use in court.
 - c. An index of the material in the ROP must be provided and a certification signed by deciding officer.
 5. After the signing of the I-871, a new I-205 is issued, citing that removal is pursuant to § 241(a)(5).
 - a. I-205 includes subject's photo and fingerprint to compare to subject at time of departure. Departure is verified.
 - b. Subject is also issued I-294, indicating a 20-year bar, unless an aggravated felon, which would indicate a lifetime bar.

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II. Demonstration

~~David Fara was convicted of sexual assault and is serving a five-year sentence at the state prison. He is due to be released.~~ David Fara was convicted of sexual assault and serving a five-year sentence in state prison. He is due for release.

(b)(5)

Subject information

Name:	David Fara
Date of Birth:	May 26, 1983
Place of Birth:	Prague, Czechoslovakia
Mother's Name:	Darina Hanks Fara
Mother's DOB:	September 16, 1960
Mother's Place of Birth:	Prague, Czechoslovakia
Father's Name:	Lukas Fara
Father's DOB:	February 14, 1958
Father's Place of Birth:	Prague, Czechoslovakia
Date Subject Entered United States:	December 25, 2008
Location Subject Entered United States:	Unknown – illegal
Reason for coming to the United States:	Seeking work
Status at entry:	Illegal
Reason for arrest:	Sexual Assault
Address in United States:	10 Leroy St., New York, NY
Citizenship:	Czech

During the interview, subject stated that he is a citizen of the Czech Republic who came to the U.S. to find work and entered by illegally crossing the northern border in December 2008 at an unknown location. He made his way to New York and found work at a bakery. Six years ago Fara was arrested after he was accused of rape by a woman who frequented the bakery. He was convicted of sexual assault. He has served his sentence and is about to be released from jail.

Fingerprint checks reveal the subject was previously removed to the Czech Republic in 2005 under the name David Fara.

You have located his A-File and acquired his previous order of removal.



1. Is Fara subject to removal from the United States? Why or why not?

Yes – He was previously removed, so his previous order of removal can be reinstated. He is also subject to removal as an aggravated felon.

2. If so, is he entitled to removal proceedings before an IJ?

No. With a reinstatement of the previous order, he is not entitled to a hearing.

3. What question must the officer ask as part of the sworn statement?

“Do you have any fear of persecution or torture should you be removed from the United States?”

4. Could Fara be granted asylum? If not, what could the non-citizen be granted?

No, only for a withholding of removal and DCAT, which is issued on a country-by-country basis

5. What forms and other information would be needed to begin the removal process in this case?

- I-213 with full narrative, charges, and recommendation
- I-215B Record of Sworn Statement in Affidavit Form [or Record of Sworn Statement in Administrative Proceedings, I-877]
- Copy of previous removal order
- Previously executed I-205 Warrant of Removal & Previously executed I-294 Warning to Non-citizen Ordered Removed or Departed, or I 296 Notice to Non-citizen Ordered Removed/Departure Verification
- I-871 Notice of Intent/Decision to Reinstate Prior Order
- Non-citizen's conviction document, photos, fingerprints
- Any evidence provided by the non-citizen
- Any countering documentation that rebuts the non-citizen's assertion that reinstatement is improper
- New I-205 and I-294

6. Does all this material go into the A-File?

Duplicate originals of the legal documents are compiled into a ROP that are held with the A-File and are used if the case is pursued in federal court.

(b)(5)

(b)(5)



III. Student Practice

Gregor Milosovich, a citizen of Serbia, is about to be released from Iowa State Penitentiary after serving 18 months of a three-year sentence for assault and battery. When interviewed, Milosovich admitted that four years ago he entered by paying a trucker to smuggle him across the border.

Through biometrics and record checks it was determined that the Milosovich had been removed previously – in 2010 he had been removed under another name.

1. Is Milosovich subject to removal from the United States? Why or why not?

Yes – He was previously removed, so his previous order of removal can be reinstated under § 241(a)(5). He is also subject to the removal bar as an aggravated felon.

2. If so, is he entitled to removal proceedings before an IJ? Why or why not

No. With a reinstatement of the previous order, he is not entitled to a hearing.

3. What question must the officer ask as part of the sworn statement?

“Do you have any fear of persecution or torture should you be removed from the United States?”

4. Could Milosovich be granted asylum? If not, what could the non-citizen be granted?

No, only eligible for a withholding of removal or DCAT

5. What forms and other information would be needed to begin the removal process in this case?

- *I-213 with full narrative, charges, and recommendation*
- *I-215B Record of Sworn Statement in Affidavit Form [or Record of Sworn Statement in Administrative Proceedings, I-877]*
- *Copy of previous removal order*
- *Previously executed I-205 Warrant of Removal & Previously executed I-294 Warning to Non-citizen Ordered Removed or Deported, or I-296 Notice to Non-citizen Ordered Removed/Departure Verification*
- *I-871 Notice of Intent/Decision to Reinstate Prior Order*
- *Non-citizen's conviction document, photos, fingerprints*
- *Any evidence provided by the non-citizen*

(b)(5)



- *Any countering documentation that rebuts the non-citizen's assertion that reinstatement is improper*
- *New I-205 and I-294*

(b)(5)

IV. Feedback and Remediation

Provide explanations as to why answers are correct or incorrect. Use additional examples as needed to ensure comprehension.



CONCLUSION

I. Summary of Main Ideas

Non-citizens who have been removed and then have reentered the United States illegally are subject to reinstatement of the original removal order and are therefore not entitled to a hearing before an IJ. They can also be criminally prosecuted for the reentry violation.

Before proceeding with a reinstatement, however, make sure you can document PPU: positive identification, previous deport, unlawful entry.

Forms used include:

- I-213
- For criminal prosecution I-215B and I-214, or for administrative proceeding I-877
- Copy of previous removal order
- Previously executed I-205, previously executed I-294 or I-296
- I-871 signed by SDDO or higher
- New I-205 and I-294

For criminal prosecution, an ROP must be created.

II. Integration

Another non-hearing procedure is that used for non-citizens convicted of certain offenses. Administrative removal is the subject of the next segment of this lesson.
G15

III. Objectives

You should now be able to prepare documentation for reinstatement of a removal order under §241(a) (5), in accordance with statutory requirements.

IV. Test or Final Activity

Knowledge of the forms, content, and process will be tested in the Activity Prep Exam and the Final Practical Exercise .



Segment 3: § 238(b) Administrative Removal Orders (Expedited Removal of an Aggravated Felon)

INTRODUCTION

I. Motivation

Administrative removals of aggravated felons is a top ICE priority. An non-citizen who is not an LPR and has an aggravated felony conviction can be removed without a hearing before an IJ. This places an important responsibility on the ERO Officer to ensure that all procedures are carefully followed.

II. Objectives

A. Terminal Performance Objective (TPO)

Given an non-citizen who is subject to removal, determine the process, procedures, forms, and form content based on requirements associated with removals under the applicable section of the INA.

B. Enabling Performance Objective (EPO)

EPO 5: Determine the forms, content, and process for an administrative removal under § 238(b), in accordance with the statutory requirements.

III. Review of the Past

1. Under what situations is a removable non-citizen (who is not a LPR) not entitled to a removal hearing before an IJ?
 - *Non-citizens subject to expedited removal under INA § 235(b)*
 - *Non-citizens subject to administrative removal under INA § 238(b)*
 - *Non-citizens subject to administrative removal under INA § 217*
 - *Non-citizens subject to reinstatement of a previously issued removal order under INA § 241(a)(5)*
 - *Crewmembers (§ 252(b)) and stowaways (§ 235(a)(2) and 241(d))*
 - *Non-citizen witnesses or informants holding an S-5, S-6, or S-7 nonimmigrant visa (8 CFR 236.4)*
 - *Non-citizens falling into distress and requesting removal at U.S. expense (§ 250)*



(b)(5),(b)(7)(E)

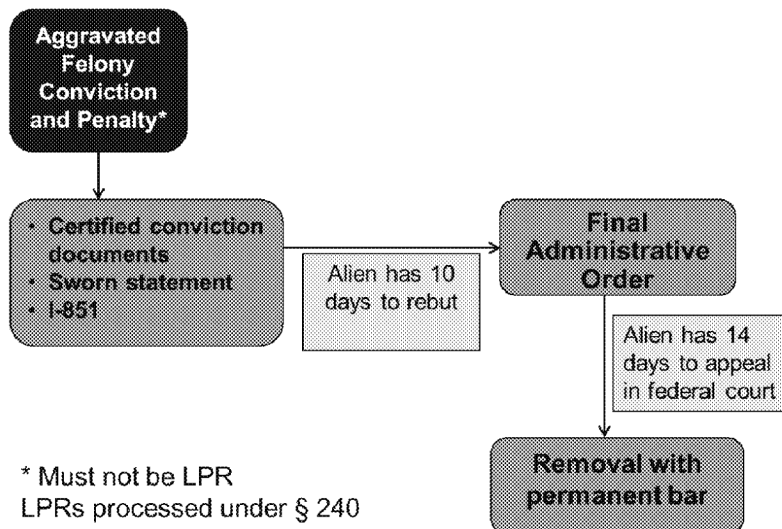
2. _____What is a ROP, for what is it used, and where is it housed?

- *Record of Proceedings* – official material constituting the record of any application, petition, hearing or other proceeding.
- *Used if the case is presented in federal court.*

(b)(5),(b)(7)(E)

IV. Main Idea

Administrative Removal Under § 238(b) – Expedited Removal of Aggravated Felon



This flowchart illustrates the process of a removal under § 238(b) of the INA. Once an non-citizen (who is not an LPR) has been convicted of an aggravated felony, he is subject to removal without a hearing under § 238(b). Particular care must be taken to adhere to procedures and ensure that all documentation is in order, with the non-citizen's identity confirmed and conviction documents certified. When the final removal order is issued, there is a permanent bar to reentry.

V. Agenda

- Forms, content, and process for administrative removal in accordance with § 238(b)
- Questions on the appropriate forms, content, and process for various scenarios



U.S. Immigration
and Customs
Enforcement

ERO Training Division



INSTRUCTION

I. Explanation

A. EPO 6: Determine the forms, content, and process for an administrative removal under § 238(b) in accordance with the statutory requirements.

1. Applies to a non-citizen who is not an LPR and who has a final conviction for an aggravated felony – as defined in INA § 101(a)(43)
 - a. Authorizes administrative proceedings – without a hearing before an IJ – to determine deportability under INA § 237(a)(2)(A)(iii) and to issue a removal order
 - b. § 238(c) states there is a “presumption of deportability” if a non-citizen is convicted of an aggravated felony, as defined under 101(a)(43). The “presumption of deportability” includes EWI/PWA non-citizens
 - c. Cannot apply to a non-citizen who is an LPR but may be used with a CR, a conditional permanent resident – such as the spouse or child of a U.S. citizen or LPR

Student Note: Conditional Permanent Resident status is granted by USCIS and would therefore need to be rescinded by USCIS. Consult with ERO management, USCIS, and OCC for further guidance on processing Conditional Permanent Residents.

2. There must be both:
 - a. Conviction, a guilty plea, or *nolo contendere*, or non-citizen has admitted sufficient facts to warrant a finding of guilt **and**
 - b. Judge has ordered some form of punishment, penalty, or restraint on the non-citizen's liberty to be imposed.
3. Procedure for administrative removal under § 238(b):
 - a. ROP must be created.
 - 1) ROP is intended to allow the case to be defended in federal court.
 - 2) ROP is compiled and stored in the A-File and may be removed and provided for use in court.
 - b. Complete I-213, including evidence of subject's immigration status and full narrative.



- c. Complete I-200
- d. Obtain certified copies of conviction documents to substantiate aggravated felony. Include memo from local OPLA or I-265 signed by OCC/OPLA approving legal sufficiency certifying that conviction rises to the level of an aggravated felony.
- e. Include additional information to substantiate the aggravated felony charge and conviction such as elements of the crime, transcript, presentencing investigation, colloquy or allocution on guilty plea
- f. Interview subject and record information on Record of Sworn Statement in Affidavit Form, I-215B or Record of Sworn Statement in Administrative Proceedings, I-877.
 - 1) If the subject declines to provide a statement, that fact is recorded on the form.
- g. Sworn statement must include this question and the non-citizen's response to it: "Do you have any fear of persecution or torture should you be removed from the United States?" (8 CFR 1208.31 – Reasonable fear of persecution or torture determinations involving non-citizens ordered removed under section 238(b) of the Act and non-citizens whose removal is reinstated under section 241(a)(5) of the Act

(b)(5)

Instructor Note: A brief overview of asylum and withholding of removal and a portion of the I-589 used to request these forms of relief are included at the end of the Student Guide. The topic is covered in more detail in the Special Status and Forms of Relief lesson.

- h. Also include all evidence (briefs and other documents) regarding deportability submitted by either party. Clear, convincing, and unequivocal evidence must support the deportability charge.
- i. An index must list all documents included in the ROP and accompanied by a certification signed by the deciding officer.

Instructor & Student Note: The officer and supervisor signing the documents are responsible for the accuracy of the form content.

- j. Serve non-citizen with a Notice of Intent to Issue a Final Administrative Removal Order, I-851.
 - 1) The identity of the person who is served the Notice of Intent must be verified.



- 2) I-851 must be verbally explained or a written translation provided in the non-citizen's native language or a language he understands.
- 3) Non-citizen must be provided with list of available free legal services.
- k. Non-citizen has opportunity (10 calendar days if served in person or 13 calendar days if served by mail) to inspect the government's evidence and offer a rebuttal to the deportation charge.
 - 1) Subject's written response is included in the A-File and ROP
4. Non-citizens subject to administrative removal under § 238(b) are only eligible for withholding of removal or Deferral of Removal under Convention Against Torture (DCAT) – not eligible for asylum (8 CFR 1208.31 Reasonable fear of persecution or torture determinations involving non-citizens ordered removed under section 238(b) of the Act and non-citizens whose removal is reinstated under section 241(a)(5) of the Act).
 - a. Non-citizen in removal proceeding under 238(b) is not eligible for asylum but must be referred to asylum officer for reasonable-fear interview.
 - b. If reasonable fear is found by the asylum officer, the asylum officer refers the case to the IJ for withholding-only proceedings to adjudicate withholding or deferral of removal under Convention Against Torture claims. If reasonable fear is not found by the asylum officer the non-citizen may still choose to have the IJ review the fear claim.
 - 1) Withholding or deferral of removal are country specific.
 - 2) An non-citizen granted withholding of removal or deferral of removal under the Convention Against Torture is not given relief from removal. The non-citizen can be removed to an alternate country.
 - 3) Withholding of removal does not apply to non-citizen convicted of agg felony where the sentence was 5 years or more. The IJ may consider any other offense as a "particularly serious crime" and determine they are ineligible for withholding of removal. These non-citizens may be eligible for DCAT.
 - c. Non-citizen may request withholding of removal under § 241(b)(3) by checking the box on the back of the I-851 or by requesting withholding in writing in response to I-851.



- d. I-851 issuing officer is SDDO or higher
- 5. A deciding service officer issues a Final Administrative Removal Order, I-851A.
 - a. Deciding officer (signs I-851A) may not be the same person as the issuing officer (signs I-851)
 - 1) Deciding officer must be equal to or above the ranking of the issuing officer.
 - 2) The issuing officer is any officer authorized to issue an NTA.
 - b. Decision of deciding officer is not subject to appeal to Board of Immigration Appeals.
 - c. The non-citizen has 14 days to file the petition for review with the U.S. Circuit Court of Appeals. The removal order cannot be carried out until the 14-day waiting period expires unless the non-citizen waives the 14-day period.
- 6. When non-citizen is to be transported for repatriation, serve the Warrant of Removal/Deportation, I-205.
 - a. Serve Warning to Non-citizen Ordered Removed or Deported (I-294), which is marked to inform non-citizen that he may not return "at any time," because the removal is for an aggravated felony conviction. (permanent bar from the U.S.)
- 7. At any point in processing a case for administrative removal under INA 238(b), the deciding official may terminate the proceedings, have an NTA issued, and conduct the removal proceeding in accordance with § 240



II. Demonstration

~~Chris Tremblay is in prison, convicted for second degree murder, and about to be released.~~ Chris Tremblay is in prison, convicted of second-degree murder and is about soon to be released.

(b)(5)

Subject information

Name:	Chris Tremblay
Date of Birth:	April 15, 1984
Place of Birth:	Dawson City, Canada
Mother's Name:	Olivia Tremblay
Mom's DOB:	October 31, 1967
Mom's Place of Birth:	Charlottetown, Canada
Father's Name:	Michael Tremblay
Father's DOB:	July 4 1965
Father's Place of Birth:	Yellowknife, Canada
Date Subject Entered United States:	April 4, 2004
Location Subject Entered United States:	Niagra Falls, NY
Reason for coming to the United States:	Find work
Status at entry:	Swam the river
Reason for arrest:	Murder
Address in United States:	31 Spooner St. Quahog, RI
Citizenship:	Canadian

Interview information and record checks confirm that the subject's parents were both born in Canada and have never lived in the United States. The subject says he entered the U.S. illegally and subsequently married a USC. His wife and child live in Quahog, RI. Records show that he pled guilty to second-degree murder and was sentenced to a prison term of not less than 10 years. Tremblay is to be released soon.

1. Is Tremblay subject to removal from the United States? Why or why not?

Yes – He has a final conviction for murder and a judge has imposed a penalty.

2. If so, is he entitled to removal proceedings before an IJ?

No. With an aggravated felony conviction, he is subject to administrative removal under 238(b) because he is not a lawful permanent resident.

(b)(5)



3. What verification of the non-citizen's criminal record is required?

Certified copies of the conviction documents and OPLA provides a memo, or signs the I-265, attesting to the fact that the charge on which the non-citizen was convicted is an aggravated felony.

4. What other materials may be included to substantiate the aggravated felony charge?

Documentation such as transcripts, pre-sentencing report, any allocution associated with a guilty plea, etc.

5. Is Tremblay eligible for any type of relief from removal?

No. Murder with the 10-year sentence would preclude him from being granted withholding of removal. With a withholding of removal or DCAT grant the non-citizen still can be removed – just not to the specific country where his fear was substantiated.

(b)(5)



6. Who can authorize an administrative removal under 238(b)?

Deciding officer on the I-851A may not be the same person who issued the I-851. Deciding officer must be equal to or above the issuing officer – that is, SDDO or higher.

(b)(5)

7. What forms and other information would be needed to begin the removal process in this case?

- *I-213 with full narrative, charges, and recommendation*
- *Certified conviction documents and memo from OPLA*
- *I-215B Record of Sworn Statement in Affidavit Form [or Record of Sworn Statement in Administrative Proceedings, I-877A]*
- *I-851 Notice of Intent to Issue a Final Administrative Removal Order*
- *I-851A Final Administrative Removal Order*
- *Any evidence provided by the non-citizen*
- *Any supplemental evidence relied on by the government to support the charges*
- *All admissible evidence submitted by either party regarding deportability*

(b)(5)

8. What documents must accompany the ROP?

An index of all documents in the ROP and a certification signed by the deciding officer

(b)(5)

III. Student Practice

Delia Alladin arrived Washington Dulles International Airport from the Philippines on a tourist visa. One month later, she was arrested on aggravated assault charges, she entered a guilty plea, and was sentenced to three years imprisonment. She is about to be released.

1. Is Alladin subject to removal from the United States? Why or why not?

Yes, she has a final conviction with an imposed penalty.

2. If so, is she entitled to removal proceedings before an IJ?

No. With an aggravated felony conviction, she is subject to administrative removal because she is not a lawful permanent resident.

3. What verification of the non-citizen's criminal record is required?

(b)(5)



Certified copies of the conviction documents and OPLA provides a memo, or signed the I-265, attesting to the fact that the charge on which the non-citizen was convicted is an aggravated felony

4. What other materials may be included to substantiate the aggravated felony charge?

Documentation such as transcripts, pre-sentencing report, any allocation associated with a guilty plea, etc.

5. Is Alladin eligible for any type of relief from removal under 238(b)?

No, only for a withholding of removal or DCAT. She will not be removed to a country where she would be tortured.

6. Who can authorize an administrative removal under 238(b)?

Deciding officer on the I-851A may not be the same person who issued the I-851. Deciding officer must be equal to or above the issuing officer – that is, SDDO or higher.

7. What forms and other information would be needed to begin the removal process in this case?

- *I-213 with full narrative, charges, and recommendation*
- *Certified conviction documents and memo from OPLA*
- *I-215B Record of Sworn Statement in Affidavit Form (or Record of Sworn Statement in Administrative Proceedings, I-877A)*
- *I-851 Notice of Intent to Issue a Final Administrative Removal Order*
- *I-851A Final Administrative Removal Order*
- *ROP*

(b)(5)

IV. Feedback and Remediation

Review answers to the questions. Provide explanations for correct and incorrect answers.



CONCLUSION

I. Summary of Main Ideas

An non-citizen who is not an LPR and has been convicted of an aggravated felony (as attested to by OPLA) and a penalty is subject to administrative removal without a hearing.

Because there is no hearing it is essential that the process be fully documented through the ROP and that the deciding officer in the case be of equal or higher position than the issuing officer.

Forms and documents used include:

- I-213
- Certified conviction documents and OPLA memo
- I-215B or I-877A
- I-851 Notice of Intent
- I-851A Final Administrative Removal Order
- Any evidence provided by the non-citizen
- Any supplemental evidence relied on by government to support charges
- All admissible evidence regarding deportability

II. Integration

There are a number of situations in which an non-citizen may be removed without benefit of a hearing. These are covered in the next segment of this lesson.

III. Objectives

You should now be able to prepare determine the forms, content, and process for an administrative removal of an non-citizen with an aggravated felony conviction under § 238(b), in accordance with the statutory requirements.

IV. Test or Final Activity

Knowledge of the forms, form content, and process will be tested in the Activity Prep Exam and the Final Practical Exercise .



Segment 4: Other Removals

INTRODUCTION

I. Motivation

The types of cases you will encounter will vary greatly depending on where you work – near the border, in a major city, near a seaport. The cases discussed here may be ones you process less frequently, but you will need to recognize the situations and how the cases should be handled.

II. Objectives

A. Terminal Performance Objective (TPO)

Given an non-citizen who is subject to removal, determine the process, procedures, forms, and form content so that the proper documentation is used for the required type of removal.

B. Enabling Performance Objectives (EPOs)

EPO 6: Determine the forms, content, and process for an expedited removal under § 235(b), in accordance with the statutory requirements.

EPO 7: Identify the removal procedures for administrative removal of: non-citizens entering under VWP, in accordance with § 217; crewmembers and stowaways; S-nonimmigrant visa holders; distressed non-citizens under § 250; and non-citizens inadmissible on national security grounds under § 235(c).

(b)(5)

III. Review of the Past

1. Under what situations is an non-citizen who is subject to removal not entitled to a removal hearing before an IJ under § 240?

- *Non-citizens subject to expedited removal under INA § 235(b)*
- *Non-citizens subject to administrative removal under INA § 238(b)*
- *Non-citizens subject to administrative removal under INA § 217*
- *Non-citizens subject to reinstatement of a previously issued removal order under INA § 241(a)(5)*
- *Crewmembers (§ 252(b)) and stowaways (§ 235(a)(2) and 241(d))*
- *Non-citizen witnesses or informants holding an S-5, S-6, or S-7 nonimmigrant visa (8 CFR 236.4)*
- *Non-citizens falling into distress and requesting removal at U.S. expense (§ 250)*
- *Non-citizens inadmissible on national security grounds (§ 235(c))*



2. What is the Visa Waiver Program?

Allows nationals of some 38 participating countries to travel to the United States for tourism or business (visitor [B] visa purposes only) for stays of 90 days or less without obtaining a visa. If the traveler is later found to have violated the conditions of admission under the Visa Waiver Program, he does not have the right to a hearing under INA 240.

Note: "Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015" put limitations on travel if the non-citizen traveled to Iraq, Syria, Iran, Sudan, Libya, Somalia, or Yemen, or if the non-citizen also holds citizenship to Iraq, Syria, Iran, or Sudan.

3. What is an S-nonimmigrant?

An non-citizen who has assisted a law enforcement agency as a witness or informant.

IV. Main Idea

Non-citizens found removable	Removal procedure
Expedited removal of illegal entrants within 14 days of entry, 100 miles of border	§ 235(b)
Entrants under Visa Waiver Program removable under § 237	§ 217

V. Agenda

- Forms, form content, and process for an expedited removal in accordance with § 235(b)
- Removals for other situations:
 - Non-citizens admitted to the U.S. under the Visa Waiver Program
 - Crewmembers
 - Stowaways
 - S-nonimmigrant visa holders
 - Non-citizens in distress
 - Non-citizens inadmissible on national security grounds



INSTRUCTION

Explanation

A. EPO 7: Determine the forms, content, and process for an expedited removal under § 235(b) in accordance with the statutory requirements.

1. Non-citizens processed as Expedited Removal under § 235(b) must falling to one of the two categories below:
 - a. An non-citizen may be processed § 235(b) if they meet all of the following:
 - 1) Not been admitted or paroled
 - 2) Inadmissible under 212(a)(6)(C) or 212(a)(7)
 - 3) Is encountered within 100 air miles of any international land border
 - 4) Has been encountered no more than 14 days after entering the U.S.

OR

- b. An non-citizen may be processed under § 235(b) if they are an arriving non-citizen at any U.S. port-of-entry who lacks proper entry document or has fraudulent documents and misrepresents a material fact. (8 CFR 2.1 The term "arriving non-citizen" means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an non-citizen seeking transit through the United States at a port-of-entry.)
 - 1) Must be inadmissible under § 212(a)(6)(C) or 212 (a)(7)
2. Non-citizens meeting the criteria for expedited removal who present themselves at a port of entry can be denied entry and sent back to the country they came from. Non-citizens encountered at a POE and processed under § 235(b) are usually denied entry and sent back to the country they came from by Customs and Border Protection. ERO may encounter these non-citizens if CBP is unable to remove them, which in many cases is due to the non-citizen expressing fear of being removed from the U.S.
3. Non-citizens processed under § 235(b) who enter into ICE custody may be subject to mandatory detention.

Instructor Note: Remind students of the definition of an arriving non-citizen – "an applicant for admission coming or attempting to come into the United States at a port-



of-entry."

4. Expedited removal process should **not** apply to non-citizens who are:
 - a. Lawful permanent residents
 - b. Unaccompanied juveniles
 - c. Crewmembers or stowaways
 - d. Victims of spousal abuse

Instructor Note: Also applies to members of ABC class. Students will learn more about ABC in Special Status and Forms of Relief.

Instructor Note: INA § 235(b)(1)(A)(iii)(II) defines "certain other non-citizens," to which expedited removal applies as those not admitted or paroled who cannot prove that they have been in the United States continuously for the two years before. However, by policy, it is applied as outlined above.

Emphasize the importance of verifying the identity of an individual who is subject to expedited removal, as with other non-hearing removal processes.

On 1/12/2017 Secretary Johnson changed policy "wet foot/dry foot" regarding Cuban non-citizens. Per new policy Cuban non-citizens may be processed under 235(b) for expedited removal.

5. Procedures
 - a. Complete I-213 and perform record checks to establish that subject is inadmissible under § 212 (a)(6)(C) or 212 (a)(7).
 - 1) Record checks should include: CIS, TECS MOD, Arrival/Departure (SQ94), CLAIMS, NCIC, EARM, IAFIS
 - b. Interview subject, with a translator if needed, to determine if the subject has fear of being harmed if returned to country of origin or last residence.
 - 1) Interview session is conducted by one ERO Officer and witnessed by another ERO Officer.
 - 2) Record of Sworn Statement Proceedings under Section 235(b)(1), I-867A, is a sworn record of that interview.
 - 3) Jurat for Record of Sworn Statement in Proceeding Under Section 235(b)(1), I-867B, must be signed by both officers and the subject.



- a) I-867B includes the question "Do you have any fear or concern about being returned to your country or being removed from the United States?"

Instructor Note: Refer students to the I-867A and B forms in the Student Guide.

- c. Provide subject List of Free Legal Service Providers.
- d. Complete Notice and Order of Expedited Removal, I-860 identifying the specific paragraphs of § 212 – 212(a)(6)(C) or 212(a)(7) – that provide the legal justification for removal.
 - 1) The subject's specific violations are spelled out in a narrative.
 - 2) ERO Officer signs the top portion, the Determination of Inadmissibility.
 - 3) Both an ERO Officer and a designated official must sign the lower portion Order of Removal
 - 4) ERO Officer must sign a Certificate of Service when he gives a copy of the form to the subject
- e. An non-citizen who expresses a fear of persecution or an intention to apply for asylum is referred to a CIS asylum officer for a credible fear interview.

Instructor Note: A brief overview of asylum and withholding of removal and a portion of the I-589 used to request these forms of relief are included at the end of the Student Guide. The topic is covered in more detail in the Special Status and Forms of Relief lesson.

- 1) If the asylum officer does not find credible fear, the non-citizen can still request the fear claim be reviewed by an IJ.
 - a) If the IJ does not find credible fear, removal under 235(b) proceeds
- 2) If the asylum officer or the IJ finds credible fear exists, the expedited removal final order will be vacated and an NTA, will need to be issued to initiate 240 removal proceedings.
- 3) Once an non-citizen is placed into INA 240 proceedings the non-citizen can file for asylum and the IJ can determine eligibility.

Instructor Note: On April 16, 2019, the Attorney General issued Matter of M-S-, 27 I&N Dec. 509 (A.G. 2019), holding that "[a]n non-citizen who is transferred from



expedited removal proceedings to full removal proceedings after establishing a credible fear of persecution or torture is ineligible for release on bond. Such a non-citizen must be detained until his or her removal proceedings conclude, unless he or she is granted parole." The Attorney General expressly overruled Matter of X-K-, 23 I&N Dec. 731, 736 (BIA 2005), which previously authorized immigration judges to conduct custody redetermination hearings ("bond hearings") for inland expedited removal cases—those non-citizens designated under INA § 235(b)(1)(A)(iii) who are subject to expedited removal, found to have a credible fear of persecution or torture, and referred for removal proceedings pursuant to 8 C.F.R. § 208.30(f).

Instructor Note: Direct students to review the I-860 and the I-296 in the Student Guide as you explain them.

- f. Provide subject Notice to Non-citizen Ordered Removed / Departure Verification, I-296, signed by ERO Officer
 - 1) Informs non-citizen of restrictions imposed because of their violations – prohibition from entering U.S. legally for 5 years, 20 years, or permanently, depending on violation
 - 2) Includes photo and fingerprint of non-citizen
 - 3) Form is signed by ERO Officer to confirm non-citizen's departure

B. EPO 8: Identify the removal procedures for administrative removal of: non-citizens entering under VWP, in accordance with § 217; ~~crewmembers and stowaways; S-nonimmigrant visa holders; distressed non-citizens under § 250; and non-citizens inadmissible on national security grounds under § 235(c).~~

(b)(5)

1. Administrative removal under INA § 217 (per policy 11070.1, Feb. 18, 2016)
 - a. Non-citizens who enter under the Visa Waiver Program (VWP) waive their right to a hearing.
 - 1) Program allows non-citizens from certain countries (see Immigration Law Pocket Field Guide) to enter as a visitor, without a visa, for stays of 90 days or less
 - 2) Waiver included in ESTA application and on I-94W
 - a) ESTA (Electronic System for Travel Authorization) records non-citizens entering under VWP at most airports and seaports



- b) Waiver appears on the back of Arrival/Departure Record, Form I-94W.

- b. Subject must be found removable under INA § 237.

Instructor Note: Explain that although the lesson provides an overview of the forms for removals under § 217, students will not be tested on those form names or numbers for processing under § 217. Instructions for completing the forms are on the ICE intranet.

Students will need to know, just like any other type of removal, to remove an under § 217 ICE will need to have a removal order issued and signed before the non-citizen is removed.

- c. § 217 administrative removal procedure:

- 1) Confirm non-citizen's age and immigration status
 - a) Do not use § 217 process for asylees, refugees, LPRs, or anyone with a pending application to adjust to LPR status
- 2) Complete I-213 and I-200
- 3) VWP Notice of Intent to Issue Final Administrative Removal Order (NOI) (71-058)
 - a) Signed by issuing officer. Non-citizen is considered to have a final order of removal after signature and service.
 - b) Serving officer signs and notifies non-citizen that he/she has 48 hours to respond to charges
 - c) If non-citizen contests removability with request of asylum, withholding of removal, or protection under DCAT, refer to an IJ for an asylum, withholding or DCAT hearing for a fear review only.
 - (1) VWP entrant who applies for asylum may be taken into ICE custody, pending an asylum hearing
 - d) If non-citizen contests removal on other grounds, serving officer must investigate and complete written report
 - e) If non-citizen refuses to sign NOI, witnessing officer must sign



- 4) Record of Proceedings (ROP) created and should be reviewed by OCC for legal sufficiency
 - a) Include ROP Visa Waiver Removal Checklist (71-059) and Certification of Authenticity of ROP (71-057) signed by district director (FOD or designee)
 - b) ROP, checklist, cover sheet added to left side of A-File
- 5) VWP Final Administrative Removal Order (71-060)
 - a) Signed by district director (FOD) or designee (per 8 CFR 1.2) – deciding official must not be the same person who issued NOI
 - b) Served by serving officer; witnessing officer signs if non-citizen refuses
 - c) Deciding official must sign and non-citizen must be served before removal order is final and non-citizen can be removed.
- 6) VWP Notice to Non-citizen Ordered Removed / Departure Verification (71-061)
 - a) 10-year bar for removal under § 217
 - b) 20-year bar for reinstatement or permanent bar for removal for aggravated felony

2. _____

II. Demonstration

You talk to Julia Marques-Garcia, a Mexican citizen who is serving a three-day sentence for public lewdness and is coming up on her release date tomorrow.

Subject information



Name:	Julia Marquez-Garcia
Date of Birth:	May 4, 1954
Place of Birth:	Tuxpan, Mexico
Mother's Name:	Maria Garcia
Mother's DOB:	February 14, 1929
Mother's Place of Birth:	Torreon, Mexico
Father's Name:	Howard Marquez-Cruz
Father's DOB:	March 16, 1932
Father's Place of Birth:	La Paz, Mexico
Date Subject Entered United States:	9 days ago
Location Subject Entered United States:	1 mile east of Presidio, TX, POE
Reason for coming to the United States:	To shop
Status at entry:	Illegal/swam the river
Reason for arrest:	Conviction for Public Lewdness
Address in United States:	None
Citizenship:	Mexico

When you interview the subject, she states she entered the United States nine days ago by swimming the river near a border town. She claims she came to the U.S. and started working as a dancer at topless bar. She was arrested in an undercover operation by the same border town local law enforcement agency.

1. Is Marquez-Garcia amenable to removal? If so, under what section of law? What, if any, is the most efficient section of the INA to remove this subject?

Inadmissible under § 212(a)(7)(A)(i)(1) – Immigrant without Documents

2. What statements must be taken from the subject and how are they documented?

- *I-867A: Record of Sworn Statement Proceedings under Section 235(b)(1) is a sworn record of interview conducted by an officer and witnessed by another.*
- *I-867B: Jurat for Record of Sworn Statement in Proceeding Under Section 235(b)(1) is signed by both officers and the subject.*

3. Is any relief available to the non-citizen in expedited removal proceedings?

Non-citizen may petition for asylum

(b)(5)

(b)(5)



4. What order of removal is given to the non-citizen, and is there any future bar to admission?

Bar may be 5, 10, or 20 years, or permanent, depending on offense. Indicate on the I-860: Notice and Order of Expedited Removal and I-296: Notice to Non-citizen Ordered Removed/Departure Verification.

(b)(5)

Under what provisions might, or might not, each of the following be removable?

Two years ago, **Dora Ramirez** came to the United States as an au pair (J-1) to work for a family with two children. One of the parents lost his job, and they informed Dora they no longer needed her. The family then moved out of the area, owing Dora six months' salary and leaving her to fend for herself. She has been ill, in and out of the county hospital, and then living in a shelter. She wants to return to Honduras but does not have the funds to do so.

May be subject to § 250 with FOD approval.

(b)(5)

Gavin Longbottom, a citizen of the UK, claims he entered the United States a year ago to visit friends in Washington, DC. He was approved through the ESTA process, presented a valid passport, and was granted admission under the Visa Waiver Program. About a month after he arrived he started picking up casual work as a carpenter. He found his skills were in demand and clients were happy to pay him in cash. Last month he was arrested on a drunk and disorderly charge. Is he amenable to removal from the U.S.? If so, under what section of law?

He can be removed without a hearing under § 217 because he overstayed his 90-day permission to enter the United States without a visa on the Visa Waiver Program.

(b)(5)

III. Student Practice

Estaban Montoya was encountered by CBP at the POE trying to enter the U.S. with forged documents that he had bought on the street in Mexico City. No criminal record or previous immigration encounters turned up in database searches.

1. Is Montoya amenable to removal from the United States? If so, under what section of law is the most efficient section of the INA to remove this subject?

Yes. Amenable to expedited removal under 235(b) (Inadmissible under § 212(a)(6)(C)(i) – fraud or misrepresentation)

2. What statements must be taken from the subject and how are they documented?

- *I-867A: Record of Sworn Statement Proceedings under Section 235(b)(1)*

(b)(5)



- *I-867B: Jurat for Record of Sworn Statement in Proceeding Under Section 235(b)(1)*
- *I-860: Notice and Order of Expedited Removal*
- *I-296: Notice to Non-citizen Ordered Removed/Departure Verification.*

3. Is any relief available to the non-citizen in expedited removal proceedings?

Non-citizen may petition for asylum

4. What order of removal is given to the non-citizen, and is there any future bar to admission?

I-860: Notice and Order of Expedited Removal and I-296: Notice to Non-citizen Ordered Removed/Departure Verification. Bar may be 5, 10, or 20 years, or permanent, depending on offense.

(b)(5)

After reviewing the questions and answers above direct students to complete paper copies of the I-860 and I-296 on Montoya.

IV. Feedback and Remediation

Review the answers to the questions. Provide explanations for correct and incorrect answers.



CONCLUSION

I. Summary of Main Ideas

Although the basic process for removal may begin with the issuance of an NTA and provide for a hearing before an IJ, many non-citizens encountered through contact with an LEA are subject to a non-hearing removal process – reinstatement of a previously issued order of removal; administrative removal of an aggravated felon under § 238(b), expedited removal under § 235(b), or other removal.

This lesson introduced the various forms and procedures that apply to each of these types of cases.

II. Integration

Non-citizens subject to removal orders may be detained and transported to an ICE detention facility or may be released on recognizance or bond with or without various restrictions. Many non-citizens subject to removal are eligible for voluntary departure – leaving the United States voluntarily without the bars to reentry associated with a removal order. The forms and procedures for these cases is covered in subsequent lessons.

Although this lesson focused on the paper version of the forms used with each case, the information for these forms will be captured using EAGLE, EADM, and EARM. However, in reviewing an A-File, you will have in front of you the printouts with original signatures.

III. Objectives

Segment 1

- EPO 1: Outline the overall sequence of removal proceedings under § 240..
- EPO 2: Determine the forms, content, and process for a removal under § 240 in accordance with the statutory requirements.
- EPO 3: Recognize which non-citizens are ineligible for voluntary departure and identify the consequences and actions associated with an non-citizen failing to comply with the provisions of a Voluntary Departure order and the forms associated with a Voluntary Departure order.
- EPO 4: Distinguish between those non-citizens who are and are not entitled to a removal hearing.

(b)(5),(b)(6),(b)(7)(C)

Segment 2

- EPO 5: Determine the forms, content, and process for reinstatement of a prior order of removal under § 241(a)(5) in accordance with statutory requirements.



Segment 3

EPO 6: Determine the forms, content, and process for an administrative removal under § 238(b) in accordance with the statutory requirements..

(b)(5)

Segment 4

EPO 7: Determine the forms, content, and process for an expedited removal under § 235(b) in accordance with the statutory requirements.

EPO 8: Identify the removal procedures for administrative removal of: non-citizens entering under VWP, in accordance with § 217;

IV. Test or Final Activity

The students will be assessed on the Activity Prep Exam and Final Practical Exercise



Attachments

Forms are included in the Student Guide at the end of each segment. They are also provided as a separate packet so that students may refer to them during explanation and demonstration. Because students may use the forms packet as a go-by for the process to follow, some forms are duplicated between segments.

- Handouts Segment 1: § 240 Removal Process
 - Flowchart illustrating § 240 process
 - When a Removal Order Becomes Administratively Final
 - I-213 Record of Deportable/Inadmissible Non-citizen
 - I-862 Notice to Appear
 - I-826 Notice of Rights and Request for Disposition
 - I-200 Warrant of Arrest of Non-citizen
 - I-265 Notice to Appear/Bond and Custody Processing Worksheet
 - I-286 Notice of Custody Determination
 - I-205 Warrant of Removal/Deportation Sample
 - I-205 Sample Completed for Fara
 - I-294 Warning to Non-citizen Ordered Removed or Deported
 - I-210 Voluntary Departure and Verification of Departure
- Handouts Segment 2: Reinstatement under § 241(a)(5)
 - Flowchart illustrating Reinstatement Process
 - I-215B Record of Sworn Statement in Affidavit Form
 - I-214 Warning as to Rights – Interview Log
 - I-877 Record of Sworn Statement in Administrative Proceedings]
 - I-871 Notice of Intent/Decision to Reinstate Prior Order
 - I-213 Record of Deportable/Inadmissible Non-citizen
 - Previously executed I-205 Warrant of Removal/Deportation
 - Previously executed I-294 Warning to Non-citizen Ordered Removed or Deported [or I-296 Notice to Non-citizen Ordered Removed/Departure Verification]
 - I-205 Warrant of Removal/Deportation
 - I-294 Warning to Non-citizen Ordered Removed or Deported
 - Index of Record of Proceedings for Reinstatement
 - ROP Certification
 - EAGLE Screen Shots on Reinstatement
- Handouts Segment 3: Administrative Removal under § 238(b)
 - Flowchart illustrating Administrative Removal process
 - I-200 Warrant of Arrest
 - I-213 Record of Deportable/Inadmissible Non-citizen
 - Certified Conviction Documents
 - I-265 Notice to Appear/Bond and Custody Processing Worksheet
 - I-215B Record of Sworn Statement in Affidavit Form
 - I-877 Record of Sworn Statement in Administrative Proceedings
 - Index of Record of Proceedings for Administrative Removal
 - ROP Certification
 - I-851 Notice of Intent (NOI) to Issue a Final Administrative Removal Order
 - I-851A Final Administrative Removal Order
 - I-205 Warrant of Removal
 - I-294 Warning to Non-citizen Removed or Deported



- Handouts Segment 4: Other Removals

- I-867A Record of Sworn Statement Proceedings under Section 235(b)(1)
- I-867B Jurat for Record of Sworn Statement in Proceeding Under Section 235(b)(1)
- I-860 Notice and Order of Expedited Removal
- I-296 Notice to Non-citizen Ordered Removed/Departure Verification
- 71-058 Notice of Intent to Issue a Final Administrative Removal Order
- 71-059 Record of Proceeding Visa Waiver Removal – Checklist
- 71-057 Certification of Authenticity of the Records of Proceedings
- 71-060 VWP Final Administrative Removal Order
- 71-061 VWP Notice to Non-citizen Ordered Removed/Departure Verification
- I-589, Application for Asylum and for Withholding of Removal
[sample of form and overview]

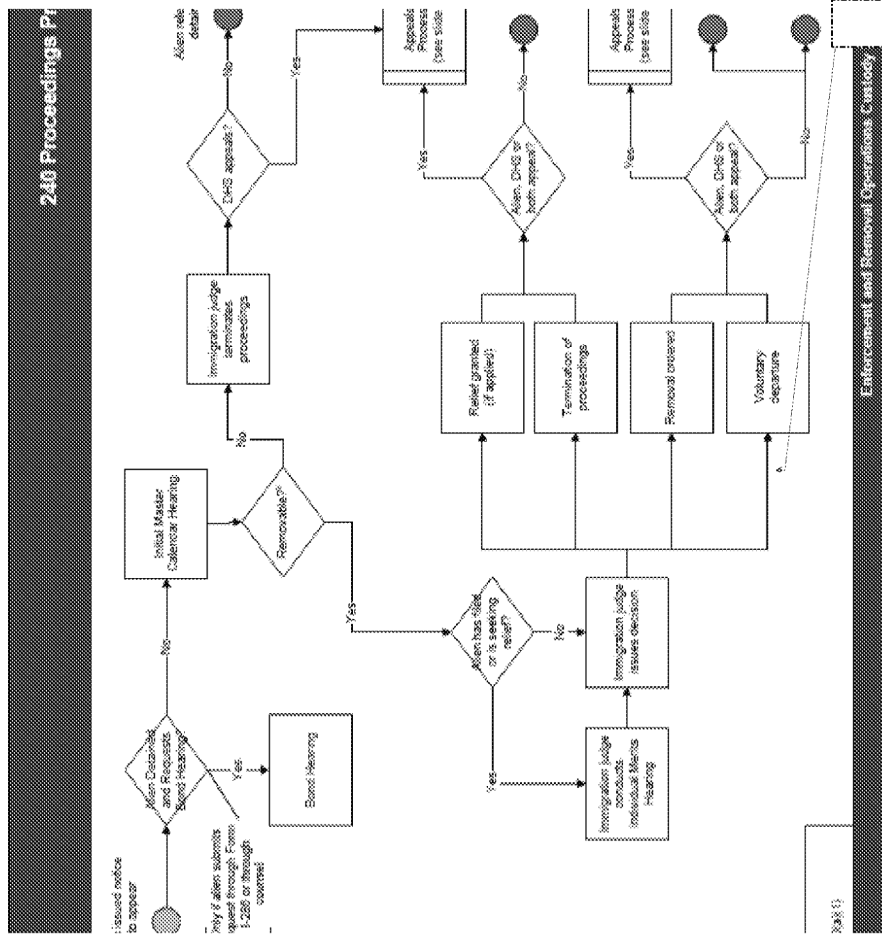
(b)(5)



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Attachments



(b)(5)



When a Removal Order Becomes Administratively Final

Type of Order	Removal Order Becomes Administratively Final	Check Before Removal
IJ orders removal <i>in absentia</i>	Date of IJ order	No Motion to Reopen (MTR) or Motion to Rescind the <i>in absentia</i> order has been filed (automatic stay)
IJ orders removal and non-citizen waives appeal	Date of IJ order	IJ order indicates that appeal has been waived
IJ orders removal and non-citizen reserves appeal but does not file timely	30 days after IJ's decision	No appeal has been filed
IJ orders removal, non-citizen appeals, and BIA dismisses appeal	Date of BIA decision	No petition for review (PFR) has been filed with the Circuit Court of Appeals (discretionary stay)
IJ grants voluntary departure (VD), non-citizen waives appeal and overstays VD period	Day after end of VD period	Non-citizen has not departed or appealed; non-citizen has not filed MTR
IJ grants VD and requires a VD bond, non-citizen waives appeal, and non-citizen fails to post bond within 5 days	6 days after IJ's order	Non-citizen has not departed; non-citizen has not, in fact, filed an appeal; non-citizen has not filed an MTR <i>Non-citizen who waives appeal may still file an appeal on grounds that the waiver was not valid; when an non-citizen has filed an appeal, the order of removal does not become final until the BIA has dismissed the appeal.</i>
IJ grants VD, non-citizen appeals, BIA dismissed appeal without reinstating VD	Date of BIA decision	No PFR has been filed.
IJ grants VD, non-citizen appeals, BIA reinstates VD, and non-citizen overstays VD period	Day after end of VD period	Non-citizen has not filed an MTR or PFR; non-citizen has not departed <i>Filing a PFR will automatically terminate the grant of VD and it may result in a stay of removal.</i>



Attachments for SEGMENT 1: Introduction and § 240 Process

I-213 Record of Deportable/Removable Non-citizen



I-213_from
EAGLE.pdf

I-826 Notice of Rights and Request for Disposition



I-826_Request_Dis
position_eagle.pdf

I-286 Notice of Custody Determination



I-286_Custody_Dete
rmin.pdf

I-200 Warrant of Arrest of Non-citizen



Revised Form I200
Warrant (OGC).pdf

I-862 Notice to Appear



I-862_Notice_Appea
r.pdf

I-265 Notice to Appear/Bond and Custody Processing Worksheet



I-265.pdf

I-205 Sample (Fara)



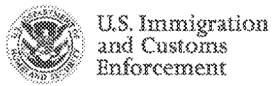
205 sample fara.pdf

I-294 Warning to Non-citizen Removed

IADP Case Disposition
OCTOBER 2023

For Official Use Only

Page 82



ERO Training Division



I-294_Warning_Rem
oval.pdf

I-210 Voluntary Departure/ Verification of Departure

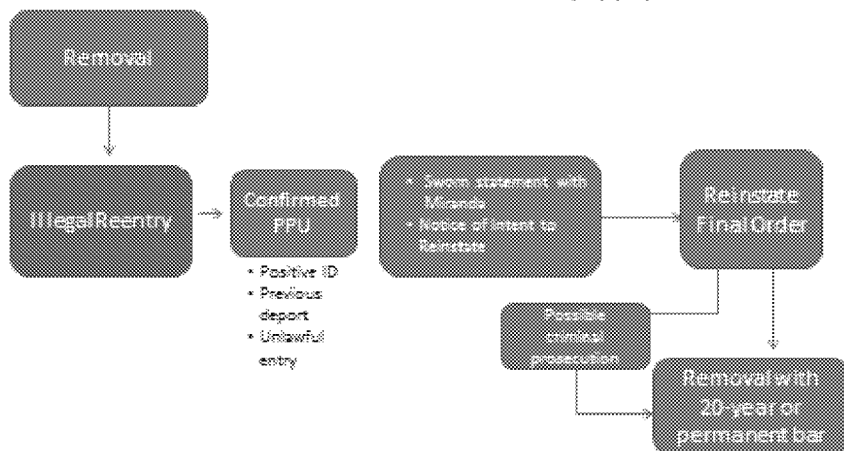


I-210.pdf



Attachments for SEGMENT 2 – § 241 Reinstatement of Removal Orders

Reinstatement – 241(a)(5)





U.S. Immigration
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I-871 Notice of Intent/Decision to Reinstate Prior Order



i_871.pdf

I-215B, Record of Sworn Statement in Affidavit Form



I-215B_with_questio
ns.pdf

I-214: Warning as to Rights – Interview Log



I-214_Warning_as_t
o_rights.pdf

I-877 Record of Sworn Statement in Administrative Proceedings



i_877.pdf

I-213 Record of Deportable/Removable Non-citizen



I-213_from
EAGLE.pdf

Previously executed I-205



I-205_previously_ex
ecuted.pdf



Previously executed I-294



I-294_previously_ex
ecuted.pdf

Previously executed I-296



I-296_previously_ex
ecuted.pdf

I-205 Warrant of Removal/Deportation



I-205.pdf

I-294 Warning to Non-citizen Ordered Removed



I-294.pdf

Index of ROP for Reinstatement



INDEX_reinststate_RO
P.pdf

ROP Certification



ROP_certification.pd
f

EAGLE Screen Shots for Reinstatement

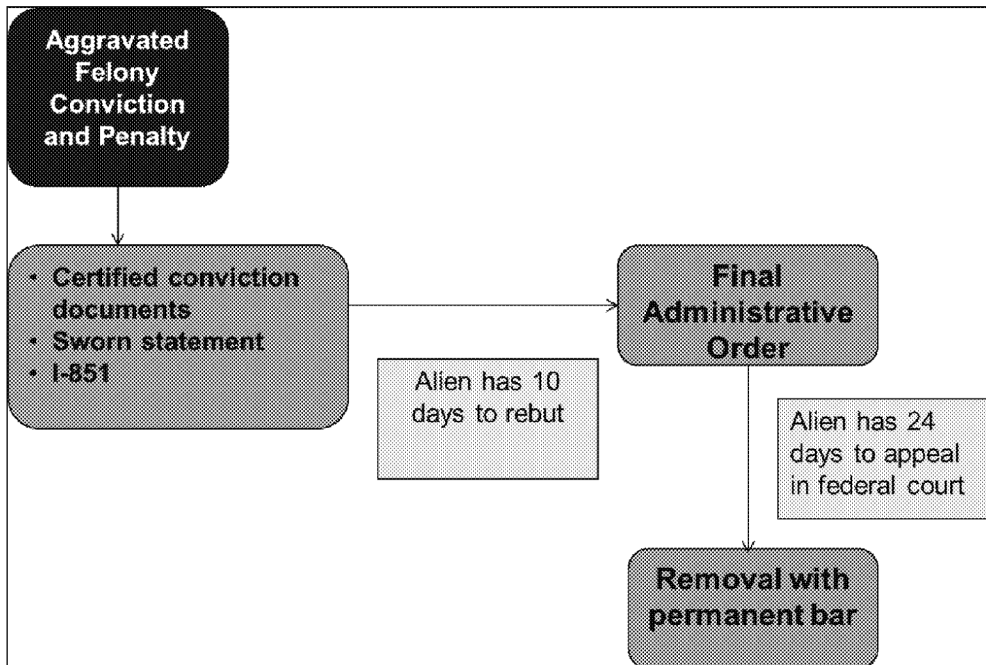


casedispo-ReInSt-Sc
reenshots.pdf



Attachments for SEGMENT 3 – § 238(b) Administrative Removals

Administrative Removal Under § 238(b) – Expedited Removal of Aggravated Felon





I-213 Record of Deportable/Removable Non-citizen



I-213_from
EAGLE.pdf

I-200 Warrant of Arrest of Non-citizen



Revised Form I200
Warrant (OGC).pdf

Conviction documents (sample)



Sample conviction
documents.pdf

I-215B Record of Sworn Statement in Affidavit Form, with free text in narrative field



I-215B Form w-free
text in Narrative field

I-877 Record of Sworn Statement in Administrative Proceedings



i_877.pdf

Index of ROP for Administrative Removal



INDEX_admin_ROP.p
df



U.S. Immigration
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ROP Certification



ROP_certification.pdf

I-851 Notice of Intent to Issue a Final Administrative Order



I-851.pdf

I-851A Final Administrative Removal Order



I-851A.pdf

I-205 Warrant of Removal/Deportation



I-205.pdf

I-294 Warning to Non-citizen Removed



I-294_Warning_Removal.pdf



Attachments for SEGMENT 4: Other Removals

Administrative Removal under INA § 235(b) (Expedited Removal)

I-867A Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act



I-867A Sworn
Statement under Sec

I-867B Jurat for Record of Sworn Statement in Proceeding Under Section 235(b)(1)



I-867B.pdf

I-860 Notice and Order of Expedited Removal



I-860.pdf

Administrative Removal under INA § 235(b) (Expedited Removal)

I-296 Notice to Non-citizen Ordered Removed / Departure Verification



i_296.pdf

71-058 Notice of Intent to Issue a Final Administrative Removal Order



form71-058_VWP_N
OI.pdf



71-059 Record of Proceeding Visa Waiver Removal – Checklist



form71-059_VWP_R
OP_Cklist.pdf

71-057 Certification of Authenticity of the Records of Proceedings



form71-057_ROP_ce
rtification.pdf

71-060 VWP Final Administrative Removal Order



form71-060_VWP_R
emoval_Order.pdf

71-061 VWP Notice to Non-citizen Ordered Removed/Departure Verification



form71-061_Notice
to Alien_Departure.pdf

Asylum

I-589, Application for Asylum and for Withholding of Removal
[sample of form and overview]



I-589_p1_overview.
pdf

U.S. Immigration and Customs Enforcement OFFICE OF ENFORCEMENT AND REMOVAL OPERATIONS

ERO Academy



RE-ENTRY AFTER REMOVAL

Lesson Plan

Immigration Authority Delegation Program

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Control Page

Key Contributors and ERO Academy Reviewed:

ASEPTPR 202119

(b)(6), (b)(7)(C)

Signature

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Record of Changes

Date of Change	A=Add. M=Mod. D=Del.	Description of Change	Reason for Change	Approved By (FN, LN, Operational Unit Chief, or IMU Representative)
12/1/2014	Modify	(b)(5),(b)(6),(b)(7)(C),(b)(7)(E)		
1/1/2017	Modify			
5/15/2018	Modify			
<u>9/10/2021</u>	<u>Modify</u>			



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LESSON DESCRIPTION

I. Lesson Title

Re-Entry After Removal

II. Program/Course Title

Immigration Authority Delegation Program

III. Description

This course will present to the 287 (g) Officer, instruction relative to the procedures necessary for processing subjects for unlawful re-entry after removal.

IV. Terminal Performance Objective (TPO)

Conditions: Given a simulated field situation,

Behavior: the 287(g) Officer will identify, and administratively remove noncitizen aliens who have unlawfully re-entered the United States after being removed,

Criterion: according to ICE statutes, policy and procedure.

V. Enabling Performance Objectives (EPOs)

EPO#1: Identify the elements of 8 USC 1326.

EPO#2: Identify the required lengths of inadmissibility for a removed alien noncitizen in accordance with INA 212(a)(9)(A).

EPO#3: Identify the three elements that are necessary to prosecute an alien noncitizen under 8 USC 1326 or to remove under INA 241(a)(5).

EPO#4: Identify the means of administratively removing an alien noncitizen who has unlawfully re-entered the United States.

VI. Length of Lesson

EXPLANATION	DEMONSTRATION	PRACTICE	ASSESSMENT	TOTAL
40 Minutes	10 Minutes	10 Minutes	Exam and/or PE	1 Hour



LESSON ADMINISTRATION

I. Lesson Title

Re-Entry After Removal

II. Risk Management

There are no special requirements.

III. Facility Requirements

- Group classroom
- Instructor station
- Computer
- Projector
- Screen
-

IV. Transportation Requirements

There are no special requirements.

V. Required Staff

One certified instructor

VI. Academy-Provided Training Aids and Equipment

- Instructor Guide
- Presentation Slides
- Instructor station with presentation equipment

VII. Student-Provided Equipment

None

VIII. Student Handouts and Materials

- Student Guide
- Law Book



IX. Attachments

- Student Demonstration/Practice Scenarios
- I-205, Warrant of Removal / Deportation
- I-294, Warning to Alien Ordered Removed or Deported
- Certification of fingerprint comparison
- Certificate of Nonexistence of Record
- Criminal Complaint
- I-871 Notice of Intent/Decision to Re-Instate Prior Order
- I-863, Notice of Referral to Immigration Judge

X. References

- Immigration & Nationality Act
- Title 8 of the Code of Federal Regulations
- Immigration Law Handbook
- (b)(6),(b)(7)(C) Policy Memorandum-Record of Proceedings in Reinstatement and Administrative Removal Cases



Lesson Plan

Re-Entry After Removal

INTRODUCTION

I. Motivation

One of the primary duties of an ICE officer will include apprehending criminal ~~aliens-noncitizens~~ who have unlawfully re-entered the United States after being removed.

II. Objectives

A. Terminal Performance Objective (TPO)

Conditions: Given a simulated field situation,

Behavior: the 287(g) Officer will identify, and administratively remove ~~aliens-noncitizens~~ who have unlawfully re-entered the United States after being removed,

Criterion: according to ICE statutes, policy and procedure.

B. Enabling Performance Objectives (EPOs)

EPO#1: Identify the elements of 8 USC 1326.

EPO#2: Identify the required lengths of inadmissibility for a removed ~~alien-noncitizen~~ IAW INA 212(a)(9)(A).

EPO#3: Identify the three elements that are necessary to prosecute an ~~alien-noncitizen~~ under 8 USC 1326 or to remove under INA 241(a)(5).

EPO#4: Identify the means of administratively removing an ~~alien-noncitizen~~ who has unlawfully re-entered the United States.

III. Review of the Past

The identification and processing of criminal subjects who reentered the United States after being previously removed is an ICE priority.



IV. Advance Organizer of Main Ideas

Aliens-Noncitizens with a criminal history are subject to the most jail time upon re-entry after removal. This is one of the reasons the government allows inmates to complete the state and local adjudication process.

V. Agenda

The lesson will proceed as follows:

We will identify the elements of 8 USC 1326.

We will identify and discuss the required lengths of inadmissibility for a removed alien-noncitizen IAW INA 212(a)(9)(A).

We will identify the three elements that are necessary to prosecute an alien noncitizen under 8 USC 1326 or to remove under INA 241(a)(5).

We will discuss and identify the means of administratively removing an alien noncitizen who has unlawfully re-entered the United States.

INSTRUCTION

I. Explanation

One of the primary duties of an ICE officer will include apprehending criminal aliens-noncitizens who have unlawfully re-entered the United States after being removed. The identification, prosecution and/or removal of these aliens noncitizens is one of ICE's priorities as they:

- Are subject to criminal prosecution, which may result in a term of imprisonment of up to twenty years.
- Can have their prior removal orders re-instated, increasing the time they must remain outside of the United States.

In order to discern which aliens-noncitizens have re-entered the United States in violation of law, it is crucial that the DIO know the elements of the statute which addresses unlawful re-entry, as well as the means by which ICE can effectively prosecute the aliennoncitizen. This knowledge will empower the DIO with valuable information which can prevent the accidental tainting of evidence which ICE needs to bring the case to a successful conclusion. Additionally, the DIO needs to know how to properly process these types of cases so upon completion



of any contemplated prosecution activity, the alien-noncitizen can be removed from the United States.

ENABLING PERFORMANCE OBJECTIVES #1:

Identify the elements of 8 USC 1326.

Elements of 8 USC 1326

1. The criminal statute that addresses unlawful re-entry after removal is 8 USC 1326 (Section 276 INA).
2. 8 USC 1326 states that any alien-noncitizen who:
 - a. Has been denied admission, excluded, deported or removed, or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter
 - b. Enters, attempts to enter, or is at any time found in the United States;(Is in violation of law.)
 - c. Unless, the Secretary of DHS has expressly consented to such alien's-noncitizen's re-applying for admission, or
 - d. Unless the alien-noncitizen shall establish that he was not required to obtain the advance consent under this or any prior Act.

ENABLING PERFORMANCE OBJECTIVES #2:

Identify the required lengths of inadmissibility for an alien-noncitizen under 8 USC 1326 or to remove said alien-noncitizen under INA 241 (a)(5).

Length of Inadmissibility:

1. As per Section 212(a)(9)(A) INA, aliens-noncitizens who are removed from the United States are prohibited from re-entering the United States for a specific amount of time.

Aliens-Noncitizens granted VD after being in the US for 6 months to 1 year, are inadmissible for 3 years from date of departure. Aliens-Noncitizens granted VD after being in the US for more than 1 year are inadmissible for 10 years.

- a. If the removal was based 235(b)(1) or 240 proceedings initiated upon the alien's-noncitizen's arrival cannot lawfully re-enter the U.S. for 5 years. (Arriving AliensNoncitizens)



- b. If the removal was based on inadmissibility (212) or deportability (237 [present law] or 241 [past law]), the alien-noncitizen cannot lawfully re-enter the U.S. for 10 years.

If the removal was based on inadmissibility (212) or deportability (237 or 241), and the alien-noncitizen had been previously excluded, deported or removed, the alien-noncitizen cannot lawfully re-enter the U.S. for 20 years.

- c. If the alien-noncitizen to be removed had ever been convicted of an aggravated felony, the alien-noncitizen cannot lawfully re-enter the U.S. at any time (forever).

2. These provisions are clearly outlined on Form I-294, Warning to Alien Ordered Removed or Deported.

3. Form I-294 is provided to an alien-noncitizen just prior to his removal from the United States.

Criminal Penalties for Illegal Re-Entry:

There are several provisions within 8 USC 1326, which address criminal penalties.

1. If removal was based on an aggravated felony conviction, subject will be fined, imprisoned not more than 20 years or both.
2. If removal was based on the following conviction(s):
 - a. Three misdemeanors involving drugs and/or crimes against the person, or
 - b. One (non-aggravated) felony, Subject will be fined, or imprisoned not more than 10 years, or both.

3. If removal was based on:

No conviction required

- a. inadmissible from the United States pursuant to section 235(c) because the alien-noncitizen was inadmissible under section 212(a)(3)(B) (terrorist related grounds) or
- b. removed under the provisions of Title V of the INA (Alien Terrorist Removal Procedures)

Subject will be fined, or imprisoned not more than 10 years, or both.

Imprisonment shall not run concurrently with any other sentence.



4. If removal was based on any other inadmissibility or deportability charge, subject will be fined, or imprisoned not more than 2 years, or both.

ENABLING PERFORMANCE OBJECTIVES BLOCK #3:

Identify the three elements that are necessary to prosecute an alien-noncitizen under 8 USC 1326 or to remove under INA 241(a)(5).

CRIMINAL PROSECUTION OF 8 USC 1326

Overview of Prosecution Steps:

1. The officer will ordinarily obtain knowledge of an alien-noncitizen who has unlawfully re-entered the U.S. through investigative discovery:

Miranda Warning –If you are considering or seeking criminal prosecution of a subject, ensure that they are properly provided their Miranda Rights prior to questioning or taking statements

- a. ICE and/or criminal record checks on apprehended or identified alien-noncitizen.
- b. Apprehended alien-noncitizen will make an admission to the unlawful re-entry.

2. In order to effectively prosecute an alien-noncitizen who has violated the provisions of 8 USC 1326, the officer **must** ensure the following:

- a. Alien-Noncitizen was **previously removed**;
- b. Alien-Noncitizen is **positively identified**;
- c. Alien-Noncitizen made an **unlawful re-entry** into the U.S.

NCIC displays notations for aliens-noncitizens who have been previously removed.

Establishing Prior Removal from the U.S.:

1. It is essential that the officer establish that the alien-noncitizen was previously excluded, deported or removed from the U.S.
2. As always, retrieval of the related A-File, and an intensive file review, is the most effective first step in the investigation.



3. The review of the A-File will positively establish whether the ~~alien-noncitizen~~ was the subject of a previous Order of Removal, and was removed from the U.S. pursuant to the Order.
4. The key article of evidence in establishing this first step is the **Warrant of Removal/Deportation, Form I-205**.

The new I-205 (IIRAIRA) also has a photograph

5. This form contains the signature and fingerprint of the ~~alien-noncitizen~~ who is being removed.
6. Form I-205 notes the port, date, and manner of removal, and contains the signature(s) and title(s) of the ICE officer(s) who witnessed and verified the departure.

Positive Identification:

1. It is essential that the officer establish that the subject in question is the same subject that had been previously removed, as per the I-205.
2. The surest way to positively identify the subject is through fingerprint certification.
3. In order to obtain fingerprint certification, the officer must obtain a current copy of subject's fingerprints. These fingerprints may be taken at apprehension or, if the subject is incarcerated by an outside agency, a copy may be available in the subject's arrest/conviction record.
4. The current fingerprints will be compared with the fingerprint that is located on the I-205.
5. Someone who is certified to conduct fingerprint comparisons (fingerprint specialist) must make this comparison. If there is no one present at the District with these qualifications, the I-205 and current fingerprint card may be sent to the Homeland Security Investigations Forensic Laboratory (HSI-FL) for analysis.
6. As these are evidentiary materials, they must be sent to the HSI-FL via certified mail.
7. When the comparison is made, a certification will be drafted and signed by the fingerprint specialist. There will be notations of the classification on the fingerprint evidence. The certification, I-205 and current fingerprint documents will then be returned to the officer.
8. The key pieces of evidence in this step are the **I-205, current fingerprint document and the signed certification**.

Unlawful Re-Entry:



1. In order to prosecute subject under 8 USC 1326, the officer must establish that the subject made an unlawful re-entry into the United States.
 - a. Re-enter without being admitted at anytime
 - b. Re-enter through admission prior to expiration of length of inadmissibility and without permission from the Secretary of DHS to do so.
2. The officer will review removal charges and conditions of re-entry in order to determine how long subject must remain outside of the US, before legally re-entering.
3. A subject encountered prior to expiration of the length of inadmissibility could be sufficient to establish unlawful re-entry. For example, if subject was to remain outside of the U.S. for ten years after removal, and was apprehended five years after removal.
4. If the subject was encountered after expiration of length of inadmissibility, the officer needs to determine time and manner of entry.
 - a. If admitted after the length of inadmissibility, the subject is not a candidate under this section.
 - b. If re-entry was without admission at any time, the subject is a candidate under this section.
 - c. And, if admitted before expiration of the length of inadmissibility, the subject could be a candidate under this section.

Examples of evidence would include a **sworn statement of subject, arrest record showing arrests prior to expiration date, driver's license dated prior to date for lawful re-entry, etc.**

5. If it is established that the subject re-entered the United States through admission prior to expiration of time period, the officer must review subject's A-file to ensure subject does not have permission from the Secretary of DHS to re-enter lawfully.
6. If there is no record in the A-File, the officer must request certification of non-existence of record for permission to re-enter after removal is made. This request is made via memorandum to Headquarters Records (HQREC), Headquarters Records Service Branch (HQSRB).
7. HQREC will conduct a manual and automated check to determine if subject received permission to lawfully re-enter the United States.



8. Once it is determined that subject did not receive permission to lawfully re-enter the United States, HQSRB will issue a Certification to the officer.
9. Two key evidentiary materials for this step are
 - a. the Certification of non-existence of record for permission to re-enter issued by HQSRB.
 - b. the I-294, Warning to Alien Ordered Removed or Deported executed at time of previous removal.
10. HQSRB (Headquarters Service Records Branch) can be contacted via voice mail at (b)(6),(b)(7)(C). The request will be made on letterhead or memorandum format (there is no special form needed) and must include the following:
 - Alien's Noncitizen's name and Date of Birth
 - Country of Birth
 - AKAs
 - A copy of the Warrant of Removal/Deportation (I-205)
 - The requesting officer's telephone number and address.
 - If you have an imminent court date, include your Field Office's FEDEX number, the court date and your suspense date.

Handling Evidence:

1. Evidence to be used for criminal prosecution under 8 USC 1326 must be logged into the Evidence Log (Form I-241), and maintained in the evidence room, or the place designated for storage of evidence within the district.
2. When evidence is removed from evidence area, i.e. sent to HSI-FL for certification, a notation must be made on the I-241. All records of the transaction (return receipt) must be kept in order to document the chain of custody.

Presentation to AUSA:

1. Once the above noted evidence is obtained, the case will be presented to the AUSA for prosecution.
2. A Memorandum for File (Form G-197) and a Criminal Prosecution Control Card (Form G-195) are completed. Each form will note acceptance or declination of the criminal prosecution case by the AUSA.
3. If prosecution is accepted, an affidavit, complaint and indictment will be drafted.



4. Headquarters policy dictates that the case not be presented for prosecution until the reinstatement of Removal is issued, based on obtaining key evidence to support the reinstatement.

ENABLING PERFORMANCE OBJECTIVES BLOCK #4:

Identify the means of administratively removing an alien-noncitizen who has unlawfully re-entered the United States.

ADMINISTRATIVE ACTION

Inadmissibility:

1. If a subject that is seeking admission has been previously removed, he is inadmissible under 212(a)(9)(A) if:
 - a. The time period for his remaining outside the United States has not expired, and
 - b. He has not received permission from the Secretary of DHS to lawfully re-enter the United States.

Reinstatement of Removal Order – Section 241(a)(5) INA:

1. Section 241(a)(5) of the Act states that:

An alien-noncitizen who has entered the United States illegally after having been removed under an Order of Removal, the prior order of removal will be re-instated from its original date, and is not subject to being re-opened or reviewed, and the alien-noncitizen shall be removed under the prior order.

2. Once approved, this removal will be effected without a hearing before an immigration judge.
3. The processing officer will complete a Record of Proceedings which consists of;

Notice of Intent/Decision to Reinstate Prior Order (Form I-871)

The prior administrative removal order

Notice to Alien Ordered Removed/Departure Verification (Form I-296)

The record check or fingerprint match, as reflected in Next Generation Identification (NGI)

Any documentary evidence submitted by alien-noncitizen

Record of Sworn Statement or the alien's-noncitizen's declination to provide such statement (Form I-877A)

Record of Deportable/Inadmissible Alien (Form I-213)



Previously executed Warrant of Removal/Deportation (Form I-205)
Previously executed Warning to Alien Ordered Removed or Deported (Form I-294)

4. A Notice of Intent/Decision to Re-Instate Prior Order, Form I-871, will be issued by the officer and served on the alien noncitizen.
5. Upon service of the I-871, the officer will explain to the alien noncitizen that he may make a written or oral statement contesting the determination.
6. The deciding official will review the alien's noncitizen's statement, along with evidentiary material presented by the officer, prior to issuing a determination.
7. The deciding official is one of the persons noted in 8 CFR 239.1, as having the authority to sign a Notice to Appear.
8. In order to support the reinstatement of the original removal order, evidence must be presented that establishes the same 3 steps that are necessary for prosecution under 8 USC 1326:
 - a. Alien Noncitizen was previously removed;
 - b. Alien Noncitizen is positively identified;
 - c. Alien Noncitizen made an unlawful re-entry into the U.S.
9. If the officer is not able to establish these three preceding facts, the previous order cannot be reinstated and the alien noncitizen must be processed for removal under other applicable procedures.
10. The same evidence obtained or would be obtained to support the prosecution will be used to support the reinstatement of the original removal order.
11. Along with the above noted evidence, the officer will present a record of sworn statement from the alien noncitizen to the deciding official. If the alien noncitizen refuses to make a statement, a record of the refusal must be submitted.
12. Once it is decided that the prior order will be re-instated, the Deciding Official will sign the I-871, and the Field Office Director will issue a new Warrant of Removal/Deportation (I-205). This I-205 will note that the removal is pursuant to 241(a)(5).
13. At time of removal, an officer will serve the new form I-205, Warrant of Removal / Deportation. The officer must also provide the alien noncitizen with the new form I-294, Warning to Alien Ordered Removed or Deported.



14. When an alien-noncitizen is removed pursuant to 241(a)(5), he will be required to remain outside of the United States for 20 years from the date of removal or at any time in the case of an aggravated felon.
15. If an alien-noncitizen that is subject to removal under 241(a)(5) expresses a fear of persecution he will be referred to an asylum officer for an interview. The asylum officer may decide to withhold removal, if it is established that the alien-noncitizen has a credible fear of persecution. Depending upon local policy and the availability of an Asylum Officer, the alien-noncitizen with a claim of fear may be referred to the Immigration Judge using form I-863, Notice of Referral to Immigration Judge.

II. Demonstration

Scenarios/questions are for demonstration purposes only and should be done as a group.

1. Have a student volunteer read the scenario/question on the PPT, which is also in his or her Student Guide.
 2. Give the class a minute to consider the appropriate step to take. Ask the class what they would do in this situation.
1. What is the criminal statute that addresses unlawful re-entry after removal?

8 USC 1326
 2. If an alien-noncitizen was previously removed for an aggravated felony, after how long may he lawfully re-enter the US?

An alien-noncitizen removed as an aggravated felon may never lawfully re-enter the US, unless granted permission to lawfully re-enter by the Attorney General (Secretary of DHS).

III. Student Practice

Students have these scenarios in their Student Guide. Allow students a few minutes to work through them; then discuss as a class.

1. What 3 elements and the related articles of evidence are necessary in order to successfully prosecute a re-entry case?
 - A. Prior removal from the US - Form I-205
 - B. Positive Identification - I-205 fingerprint, current fingerprint document, certification of fingerprint comparison



C. Unlawful Re-Entry - Sworn statement of alien/noncitizen, or items such as arrest record, driver's license, etc. showing arrest/issuance date prior to lawful re-entry date AND Certificate of non-existence of record for permission to re-enter from HQ.

2. Administrative removal of an alien/noncitizen as a "re-entry after removal" is removable pursuant to what section of the INA?

241(a)(5)

IV. Feedback and Remediation

This part of the lesson provides an in-class review and discussion of the Student Practice.

Remediation will be provided via additional review and questions and scenarios pertaining to Re-Entry After Removal.

This assessment (Activity Prep) has 50 general knowledge and scenarios questions. Students need a passing score of 70% or better before remediation is necessary.

CONCLUSION

I. Summary of Main Ideas

We have identified the elements of a violation of 8 USC 1326 and the length of time these aliens/noncitizens must remain out of the United States. More importantly we have learned the key elements for criminal prosecution of these individuals.

II. Integration

One of the primary duties of an ICE officer will include apprehending criminal aliens/noncitizens who have unlawfully re-entered the United States after being removed.



III. Objectives

EPO#1: Identify the elements of 8 USC 1326.

EPO#2: Identify the required lengths of inadmissibility for a removed alien noncitizen IAW INA 212(a)(9)(A).

EPO#3: Identify the three elements that are necessary to prosecute an alien noncitizen under 8 USC 1326 or to remove under INA 241(a)(5).

EPO#4: Identify the means of administratively removing an alien noncitizen who has unlawfully re-entered the United States.

IV. Motivation

One of the primary duties of an ICE officer will include apprehending criminal aliens noncitizens who have unlawfully re-entered the United States after being removed.

V. Test or Final Activity

Students will be tested on Re-Entry After Removal in a cumulative practical exercise and also have an exam in this program (Activity Prep), which consist of multiple-choice questions. Students will be required to score a minimum of 70% to pass. The testable material will be from the EPOs in this course of study.

VI. Attachment

- Student Demonstration/Practice Scenarios
- I-205, Warrant of Removal / Deportation
- I-294, Warning to Alien Ordered Removed or Deported



- Certificate of Nonexistence of Record
- Criminal Complaint
- I-871 Notice of Intent/Decision to Re-Instate Prior Order
- I-863, Notice of Referral to Immigration Judge



U.S. Department of Justice

Immigration and Naturalization Service

Warrant of Removal/Deportation

File No: _____

Date: _____

To any officer of the United States Immigration and Naturalization Service:

(Full name of alien)

who entered the United States at _____ on _____
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☐ an immigration judge in exclusion, deportation, or removal proceedings
- ☐ a district director or a district director's designated official
- ☐ the Board of Immigration Appeals
- ☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

(Signature of INS official)

(Title of INS official)

(Date and office location)

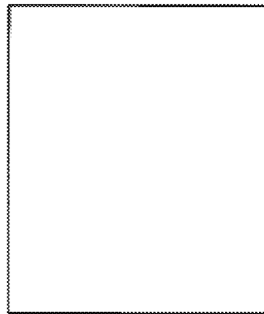
Form I-205 (Rev 4-1-97)N



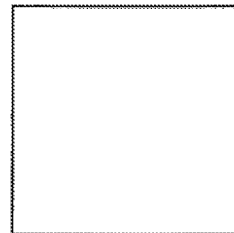
To be completed by Service officer executing the warrant:

Name of alien being removed: _____

Port, date, and manner of removal: _____



Photograph of alien
removed



Right index fingerprint
of alien removed

(Signature of alien being fingerprinted)

(Signature and title of INS official taking print)

Departure witnessed by: _____
(Signature and title of INS official)

If actual departure is not witnessed, fully identify source or means of verification of departure:

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here. ☐

Departure Verified by: _____
(Signature and title of INS official)

Form I-205 (Rev 4-1-97)N



U.S. Department of Justice
Immigration and Naturalization Service

Warning to Alien Ordered Removed or Deported

File No: _____

Date: _____

Alien's full name: _____

In accordance with the provisions of section 212(a)(9) of the Immigration and Nationality Act (Act), you are prohibited from entering, attempting to enter, or being in the United States:

- ☐ For a period of 5 years from the date of your departure from the United States because you have been found deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act initiated upon your arrival in the United States as a returning lawful permanent resident.
- ☐ For a period of 10 years from the date of your departure from the United States because you have been found:
 - ☐ deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.
 - ☐ inadmissible under section 212 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act initiated as a result of your having been present in the United States without admission or parole.
 - ☐ deportable under section 241 of the Act and ordered deported from the United States by an immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act.
 - ☐ deportable under section 237 of the Act and ordered removed from the United States in accordance with section 238 of the Act by a judge of a United States district court, or a magistrate of a United States magistrate court.
- ☐ For a period of 20 years from the date of your departure from the United States because, after having been previously excluded, deported, or removed from the United States, you have been found:
 - ☐ inadmissible under section 212 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.
 - ☐ deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.
 - ☐ deportable under section 237 of the Act and ordered removed from the United States in proceedings under section 238 of the Act.
 - ☐ deportable under section 241 of the Act and ordered deported from the United States by an immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act.
 - ☐ to have reentered the United States illegally and have had the prior order reinstated under section 241(a)(5) of the Act.
- ☐ At any time because you have been found inadmissible or excludable under section 212 of the Act, or deportable under section 241 or 237 of the Act, and ordered deported or removed from the United States, and you have been convicted of a crime designated as an aggravated felony.

After your removal has been effected you must request and obtain permission from the Attorney General to reapply for admission to the United States during the period indicated. You must obtain such permission before commencing your travel to the United States. Application forms for requesting permission to reapply for admission may be obtained by contacting any United States Consulate or office of the Immigration and Naturalization Service. Refer to the above file number when requesting forms or information.

WARNING: Title 8 United States Code, Section 1326 provides that it is a crime for an alien who has been removed from the United States to enter, attempt to enter, or be found in the United States without the Attorney General's express consent. Any alien who violates this section of law is subject to prosecution for a felony. Depending on the circumstances of the removal, conviction could result in a sentence of imprisonment for a period of from 2 to 20 years and/or a fine of up to \$250,000.

(Signature of officer serving warning)

(Title of officer)

(Location of INS office)

Form I-294 (6-1-97)N



U.S. Immigration
and Customs
Enforcement

Office of Enforcement and Removal Operations

U.S. Department of Justice
Immigration and Naturalization Service

Certificate of Nonexistence of Record

CO 103.5-C

September 24, 1998

I, **(b)(6),(b)(7)(C)** certify to the following:

1. That I am a *File Supervisor* in the Records Services Branch, Office of Records, Headquarters, of the Immigration and Naturalization Service, United States Department of Justice, and by virtue of the authority contained in Section 290(d) of the Immigration and Nationality Act and 8 CFR 103.7(d)(4), I am authorized to certify the nonexistence in the records of the Service of an official file, document, or record pertaining to a specified person or subject.

2. The Headquarters of the Immigration and Naturalization Service maintains centralized records relating to immigrant aliens who arrived after June 30, 1934, to nonimmigrant aliens who arrived on or after June 30, 1948, and a centralized index of all persons naturalized on or after September 27, 1906.

3. That after diligent search no record is found to exist in the records of the Immigration and Naturalization Service. *The search included a review of the Service's automated and nonautomated records systems. There is no evidence of the filing of an application for permission to reapply for admission to the United States after deportation, or the granting of such permission, relating Jaime Terrazas-Sanchez, also known as Jaime Sanchez, born [REDACTED] 1970 or [REDACTED] 1974, in Mexico.*

(b)(6),(b)(7)(C)

Files Supervisor
Records Services Branch



A0 91 (Rev. 8/01) Criminal Complaint

UNITED STATES DISTRICT
COURT

DISTRICT

UNITED STATES OF AMERICA

CRIMINAL COMPLAINT

Case Number:

(Name and Address of Defendant)

I, the undersigned complainant state that the following is true and correct to the best of my
knowledge and belief On or about _____ in _____ County, in
the _____ District of _____ defendant(s) did,

(Track Statutory Language of

in violation of Title _____ United States Code, Section(s) _____

I further state that I am a(n) _____ and that this complaint is based on the
following facts:

Official Title

Continued on the attached sheet and made a part of this complaint:

Yes ☐ No ☐

Signature of Complainant

Printed Name of Complainant

Sworn to before me and signed in my

at

Date

City and State

Name and Title of Judicial Officer

Signature of Judicial Officer



U.S. Department of Justice

Immigration and Naturalization Service

Notice of Intent/Decision to Reinstate Prior Order

File No. _____

Date: _____

Name: _____

In accordance with section 241(a)(5) of the Immigration and Nationality Act (Act) and 8 CFR 241.8, you are hereby notified that the Attorney General intends to reinstate the order of _____ entered against you. This intent is based on the following determinations:
(Deportation / exclusion / removal)

1. You are an alien subject to a prior order of deportation / exclusion / removal entered on _____ at _____
(Date) (Location)
2. You have been identified as an alien who:
☐ was removed on _____ pursuant to an order of deportation / exclusion / removal.
(Date)
☐ departed voluntarily on _____ pursuant to an order of deportation / exclusion / removal on or after the date on which such order took effect (i.e., who self-deported).
(Date)
3. You illegally reentered the United States on or about _____ at or near _____
(Date) (Location)

In accordance with Section 241(a)(5) of the Act, you are removable as an alien who has illegally reentered the United States after having been previously removed or departed voluntarily while under an order of exclusion, deportation or removal and are therefore subject to removal by reinstatement of the prior order. You may contest this determination by making a written or oral statement to an immigration officer. You do not have a right to a hearing before an immigration judge.

The facts that formed the basis of this determination, and the existence of a right to make a written or oral statement contesting this determination, were communicated to the alien in the _____ language.

(Printed or typed name of official)

(Signature of officer)

(Title of officer)

Acknowledgment and Response

I ☐ do ☐ do not wish to make a statement contesting this determination.

(Date)

(Signature of Alien)

Decision, Order, and Officer's Certification

Having reviewed all available evidence, the administrative file and any statements made or submitted in rebuttal, I have determined that the above-named alien is subject to removal through reinstatement of the prior order, in accordance with section 241(a)(5) of the Act.

(Date)

(Location)

(Signature of authorized deciding INS official)

(Printed or typed name of official)

(Title)

Form I-871 (Rev. 6-5-97)



U. S. Department of Justice
Immigration and Naturalization Service

Notice of Referral to Immigration Judge

	Date
	A-File
Name	Country of Citizenship
Place and Manner of Arrival	Date of Arrival

To Immigration Judge:

- ☐ 1. The above-named alien has been found inadmissible to the United States and ordered removed pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act). A copy of the removal order is attached. The alien has requested asylum and/or protection under the Convention against Torture and the matter has been reviewed by an asylum officer who has concluded the alien does not have a credible fear of persecution or torture. The alien has requested a review of that determination in accordance with section 235(b)(1)(B)(iii)(III) of the Act and 8 CFR § 208.30(g).
- ☐ 2. The above-named alien arrived in the United States as a stowaway and has been ordered removed pursuant to section 235(a)(2) of the Act. The alien has requested asylum and/or withholding of removal under the Convention against Torture and the matter has been reviewed by an asylum officer who has concluded the alien does not have a credible fear of persecution or torture. The alien has requested a review of that determination in accordance with section 235(b)(1)(B)(iii)(III) of the Act.
- ☐ 3. The above-named alien arrived in the United States in the manner described below and has requested asylum and/or withholding of removal under the Convention against Torture. The matter is referred for a determination in accordance with 8 CFR § 208.2(c). Arrival category (check one):
- | | | |
|---|--|---|
| ☐ Crewmember/applicant | ☐ Crewmember/refused | ☐ Crewmember/landed |
| ☐ Crewmember/violator | ☐ VWP/applicant | ☐ VWP/violator |
| ☐ 235(c) order | ☐ S-visa nonimmigrant | ☐ Stowaway: credible fear determination attached |
- ☐ 4. The above-named alien has been ordered removed by an immigration officer pursuant to section 235(b)(1) of the Act. A copy of the removal order is attached. In accordance with section 235(b)(1)(C) of the Act, the matter is referred for review of that order. The above-named alien claims to be (check one):
- | | |
|---|--|
| ☐ a United States citizen | ☐ a lawful permanent resident alien |
| ☐ an alien granted refugee status under section 207 of the Act | ☐ an alien granted asylum under section 208 of the Act. |
- ☐ 5. The above-named alien has been ordered removed pursuant to section 238(b) of the Act, or the Immigration and Naturalization Service (INS) has reinstated a prior exclusion, deportation, or removal order of the above-named alien pursuant to section 241(a)(5) of the Act. A copy of the removal order and, if applicable, the notice of reinstatement, are attached. The alien has expressed fear of persecution or torture and the claim has been reviewed by an asylum officer who has concluded the alien **does not** have a reasonable fear of persecution or torture. The alien has requested a review of that determination in accordance with 8 CFR §§ 208.31(f) and (g).
- ☐ 6. The above-named alien has been ordered removed pursuant to section 238(b) of the Act, or the INS has reinstated a prior exclusion, deportation, or removal order of the above-named alien pursuant to section 241(a)(5) of the Act. A copy of the removal order and, if applicable, the notice of reinstatement, are attached. The alien has expressed fear of persecution or torture and the claim has been reviewed by an asylum officer who has concluded the alien **has** a reasonable fear of persecution or torture. The matter is referred for a determination in accordance with 8 CFR § 208.31(e).
- ☐ 7. The Commissioner of the INS has determined that the release from custody of the above-named alien who is under a final order of removal would pose a special danger to the public according to the standards set in 8 CFR § 241.14(f)(1). The INS has therefore invoked procedures to continue the alien's detention even though there is no significant likelihood that the alien will be removed from the United States in the reasonably foreseeable future. The matter is referred to the immigration judge for a review of this determination in accordance with 8 CFR § 241.14(g).



U. S. Department of Justice
Immigration and Naturalization Service

Notice of Referral to Immigration Judge

NOTICE TO APPLICANT

You are ordered to report for a hearing before an immigration judge for the reasons stated above. Your hearing is scheduled on

_____ at _____. You are to appear at _____
(Date) (Time)

(Complete office address)

- ☐ You may be represented in this proceeding, at no expense to the government, by an attorney or other individual authorized and qualified to represent persons before an Immigration Court. If you wish to be so represented, your attorney or representative should appear with you at this hearing. In the event of your release from custody, you must immediately report any change of your address to the Immigration Court on Form EOIR-33, which is provided with this notice. If you fail to appear for a scheduled hearing, a decision may be rendered in your absence.
- ☐ You may consult with a person or persons of your own choosing prior to your appearance in Immigration Court. Such consultation is at no expense to the government and may not unreasonably delay the process.
- ☐ Attached is a list of recognized organizations and attorneys that provide free legal service.

(Signature and title of immigration officer)

CERTIFICATE OF SERVICE

- ☐ The contents of this notice were read and explained to the applicant in the _____ language.
- ☐ The original of this notice was delivered to the above-named applicant by the undersigned on _____ and the alien has been advised of communication privileges pursuant to 8 CFR 236.1(c). Delivery was made:
- ☐ in person ☐ by certified mail, return receipt requested ☐ by regular mail

(Signature and title of immigration officer)

Attachments to copy presented to immigration judge:

- | | |
|---|---|
| ☐ Passport | ☐ Form I-860 |
| ☐ Visa | ☐ Form I-869 |
| ☐ Form I-94 | ☐ Form I-898 |
| ☐ Forensic document analysis | ☐ Asylum officer's reasonable fear determination worksheet (I-899) |
| ☐ Fingerprints and photographs | ☐ Asylum officer's credible fear determination worksheet (I-870) |
| ☐ EOIR-33 | |
| ☐ FOR 8 CFR 241.14(b) CASES ONLY: Written statement including summary of the basis for the Commissioner's determination to continue the alien in detention, and description of the evidence relied on in finding the alien specially dangerous (with supporting documents attached). | |
| ☐ FOR 8 CFR 241.14(b) CASES ONLY: Written notice advising the alien of initiation of proceedings and informing alien of procedures governing the Reasonable Cause Hearing at 8 CFR 241.14(b). | |
| ☐ Other (specify): _____ | |



INDEX

RECORD FILE

Alien Name

A00-000-0

- ☐ Certification.
- ☐ Notice of Intent/Decision to Reinstate Prior Order (Form 1-871).
- ☐ The prior administrative removal order.
- ☐ Notice to Alien Ordered Removed/Departure Verification (Form 1-296).
- ☐ The record check or fingerprint match.
- ☐ Any documentary evidence submitted by the alien.
- ☐ Record of Sworn Statement or the alien's declination to provide such statement (Form 1-877).
- ☐ Record of Deportable/Inadmissible Alien (Form 1-213).
- ☐ Warrant of Removal/Deportation (Form 1-205).
- ☐ Warning to Alien Ordered Removed or Deported (Form 1-294).
- ☐ Any other evidence relied upon to support the charges.
- ☐ Any documents that rebut the alien's assertion that reinstatement is improper.



UNITED STATES DEPARTMENT OF HOMELAND SECURITY
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

CERTIFICATION OF _____:

1. I am a position title with U.S. Immigration and Customs Enforcement.
United States Department of Homeland Security. I have served in this position
since _____. My office is located in _____ and my
responsibilities include the maintenance and creation of the official Record of
Proceedings. I am the deciding officer in the matter of _____, file
number A _____.
2. Annexed to this Certification is the official Record of Proceedings.

I hereby certify to the best of my knowledge and belief that the annexed documents are originals, or copies
thereof, of the official Record of Proceedings. These documents relate to:

Subject:
File Number: A

Dated: _____ Name _____
Title _____

U.S. Immigration and Customs Enforcement ENFORCEMENT AND REMOVAL OPERATIONS

ERO Training



CASE DISPOSITION: REMOVALS

Student Guide

Immigration Authority Delegation Program

WARNING: This document is FOR OFFICIAL USE ONLY (FOUO). This contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.G. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public, to anyone outside the ERO Academy, or to other personnel who do not have a valid "need-to-know" without prior approval of the ERO Academy Chief or their designee.



Segment 1: Introduction and § 240 Removals

INTRODUCTION

I. Motivation

The statutes provide ICE with various legal tools to remove noncitizens who have entered the United States illegally, who are here legally but have violated the conditions of their status, or who present a danger to the safety of our communities. These tools are the forms and procedures that can be applied to the specific facts of an alien's case.

You may be completing the forms yourself or reviewing a detainee's file to verify that it includes all the required documentation, properly completed and signed. This must be done before the detainee can be moved to the next step in the removal process.

Processing a case incorrectly has consequences: Transporting an alien with an incomplete file could mean that the receiving office will refuse to accept custody. Processing a removal incorrectly can create delays and open the agency to a legal challenge of the removal – and open the officer to liability.

II. Objectives

A. Terminal Performance Objective (TPO)

Given a noncitizen who is subject to removal, determine the process, procedures, forms, and form content so that the proper documentation is completed for the required type of removal.

B. Enabling Performance Objectives (EPOs)

EPO 1: Outline the overall sequence of removal proceedings under § 240.

EPO 2: Determine the forms, content, and process for a removal under § 240 in accordance with the statutory requirements.

EPO 3: Recognize which noncitizens are ineligible for voluntary departure and identify the consequences and actions associated with a noncitizen failing to comply with the provisions of a Voluntary Departure order and the forms associated with a Voluntary Departure order.

EPO 4: Distinguish between those noncitizens who are and are not entitled to a removal hearing.

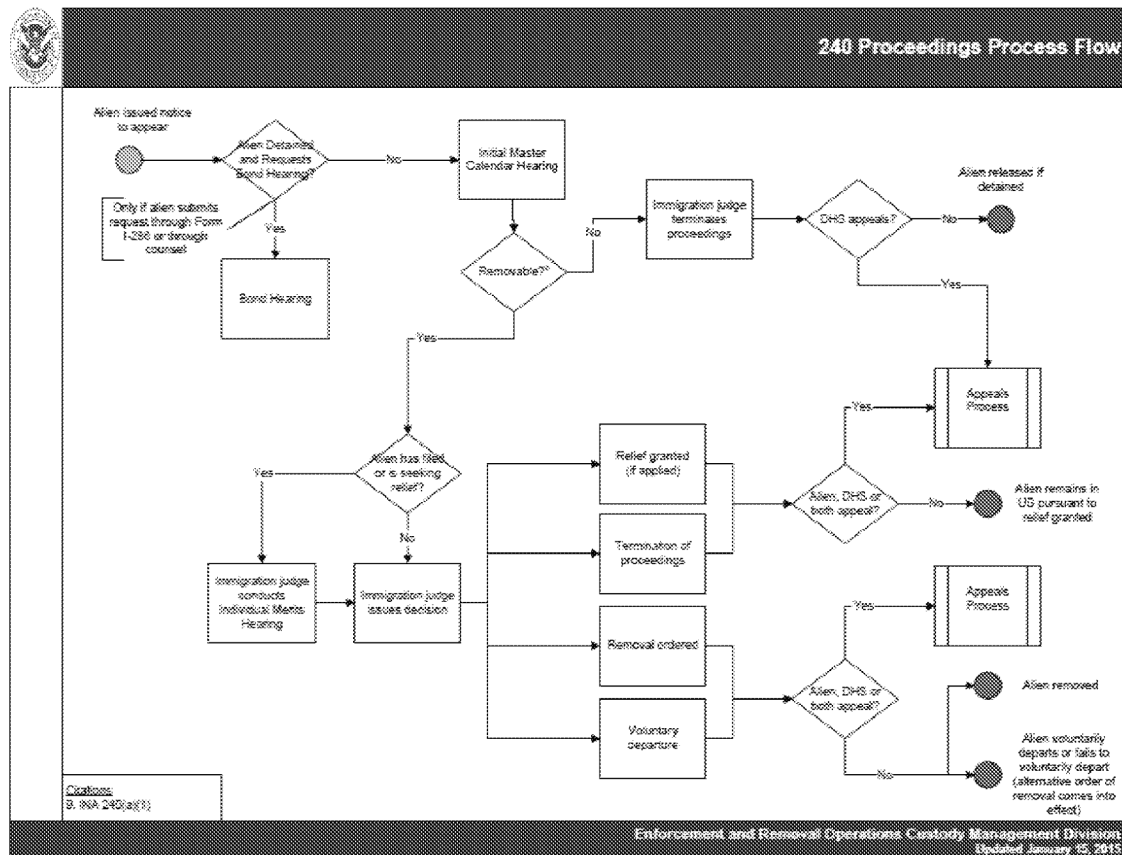
III. Review of the Past

- What is a lawful permanent resident?
-



- Where is the individual's alienage and removability documented?

IV. Main Idea



This flowchart (which appears full-page on page 23) tracks the process of a removal under § 240 of the INA.

V. Agenda

This lesson is divided into four segments.

- Segment 1:
 - High-level overview of the removal process
 - Forms, content, and process for removals under § 240
 - Voluntary departure, noncitizens not eligible for voluntary departure, consequences of failure to comply with voluntary departure order
 - Which noncitizens are entitled to a removal hearing



- Segment 2: Forms, content, and process for reinstating a prior removal order in accordance with § 241(a)(5)
- Segment 3: Forms, content, and process for administrative removals under § 238(b)
- Segment 4: Procedures for other types of removal, including expedited removals under § 235(b) and removals under the Visa Waiver Program, § 217; removal of crewmembers and stowaways, S-nonimmigrant visa holders, aliens falling into distress, and inadmissible aliens who are a threat to national security.

For each segment you will answer questions on the appropriate forms, content, and process for various scenarios.

VI. Handouts

The forms referred to in this lesson are included in this Student Guide. In addition, you will receive a separate packet of the same forms to make it simpler to refer to the forms during the lecture and while working through the questions.



Segment 1: Introduction and § 240 Removals

INSTRUCTION

I. Explanation

A. EPO 1: Outline the overall sequence of removal proceedings under § 240.

Note: Refer to flowchart illustrating the § 240 process (which appears full size at the end of this segment).

1. Removal proceedings under INA § 240 are conducted with the Immigration Court (Executive Office for Immigration Review, EOIR), which is an office of the United States Department of Justice
2. Noncitizen is served with Notice to Appear (NTA), Form I-862, to appear before an immigration judge (IJ). Noncitizen may be detained during removal proceedings.
 - a. Removal proceedings are commenced by the filing of an NTA with the Immigration Court (EOIR)
3. Proceedings before IJ determine if alien is amenable to removal based on charges on NTA – inadmissible under INA § 212; deportable under INA § 237
 - a. Proceedings can include master hearing(s) and/or merits hearing(s)
 - b. Noncitizen may apply for relief from removal
 - c. If noncitizen is detained, the noncitizen may seek a bond hearing – separate from removal proceedings
4. Master calendar hearing is a brief initial hearing where the IJ generally explains to the noncitizen the nature of the proceedings, the charges against them, their rights (including their right to counsel at no cost to the U.S. government), takes pleadings (addressing the allegations and the charge(s) of removability), and identifies any relief from removal.

Note: The IJ may issue an order of removal during a master calendar hearing, but not if the noncitizen is seeking relief or is contesting the government's case.

5. During a merits hearing, the IJ considers all evidence, including documentary and testimonial evidence, on any contested issues involving removability and/or relief from removal .



- a. Hearing on the noncitizen's removal is conducted in an EOIR courtroom (which could be located in a detention facility) or via video teleconference (often done for subjects incarcerated in a state or federal facility)
6. Noncitizen may be represented by counsel. Legal representation is not provided by the government
 - a. The noncitizen receives a list of Free Legal Service Providers when he is initially charged, but this does not guarantee availability of free legal counsel.
 - b. Interpreter services for the hearing are provided, as needed, at government expense. Documents provided by the noncitizen in his case must be in English and translated at their expense.
7. Government attorneys present the government's case for removal, based on information from the I-213, the A-file, including charging documents, noncitizen's sworn statement (or unsworn declarations), conviction records, and other evidence.
8. Burden of proof is based on the charges:
 - a. If the alien is charged under § 212 with being inadmissible, the alien must prove admissibility.
 - b. If the alien is charged under § 237 with being deportable, the government must prove deportability.
9. The IJ may grant a continuance, as appropriate to the situation.
10. If the noncitizen does not appear for his scheduled hearing, the IJ can issue an order of removal in absentia.
 - a. If noncitizen has a final order of removal in absentia, and a motion to reopen is filed with the immigration court an automatic stay of removal may be in effect
 - b. An automatic stay means the noncitizen may not be removed by ICE until the IJ renders a decision on the motion to reopen.
 - c. As there are different interpretations or policies in the field and decisions regarding motions to reopen, check with your local OPLA Chief Counsel Office for legal guidance regarding automatic stays for your specific jurisdiction.



B. EPO 2: Determine the forms, content, and process for a removal under § 240 in accordance with the statutory requirements.

1. Removal under INA § 240 applies to the following types of aliens:
 - a. Alien is alleged to be inadmissible under § 212 or deportable under § 237 of the INA and does not fall into the category of aliens not entitled to a hearing.
 - b. Alien has been denied voluntary departure or return or is not eligible for voluntary departure.
 - c. Alien who has been granted asylee or refugee status and may be subject to removal
 - d. Alien has lawful permanent resident status; LPRs may only be removed through § 240 process.
2. Examples of aliens who may be placed in § 240 proceedings:
 - a. LPR who is convicted of a crime of violence, as defined in 101(a)(43)(F)
 - b. Alien present without admission who has been in the United States four months, has been arrested, and has no criminal convictions
 - c. A nonimmigrant who is in violation of his status
3. Record of Deportable/Inadmissible Alien, I-213
 - a. Document information from interview with subject and database checks on I-213.
 - 1) Biographical details and records checks are documented on form used to establish grounds for removal charge.
 - 2) Narrative should include:
 - a) Method of encounter/location
 - b) Alienage and deportability/inadmissibility
 - c) Criminal history
 - d) Immigration status and pending petitions
 - e) Military service
 - f) Health and humanitarian aspects
 - g) Funds in subject's possession
 - 3) Alien has been advised of communication privileges with their consulate or embassy



- 4) Officer's signature and disposition
- 5) Supervisor's signature
4. Notice of Rights and Request for Disposition, I-826, informs the noncitizen of his right to a hearing before Immigration Court or the option of returning to his country without a hearing.
 - a. Also allows noncitizen to state that he believes he faces harm if repatriated (that is, sent back to his own country)
 - b. Should be signed by noncitizen with one option initialed.
 - c. Requires a certification of service signed by immigration officer and interpreter.
5. File Warrant of Arrest of Alien (I-200).
 - a. Requires issuing officer to indicate the basis of the determination that there is probable cause that noncitizen is removable
 - b. Administrative warrant issued when a subject is taken into custody prior to the noncitizen being issued a removal order
 - c. Signed by SDDO or higher
 - d. Certificate of service signed by serving officer and noting the language used to read warrant to noncitizen
 - 1) Include name or number of interpreter, if one was used
6. Notice of Custody Determination, Form I-286:
 - a. Informs the subject whether he is to be:
 - 1) Detained in ICE custody
 - 2) Released on bond
 - 3) Released on personal recognizance
 - 4) Release under other conditions
 - b. Minimum amount for a custody (delivery) bond is \$1,500 –INA 236(a)(2)(A)
 - c. Noncitizen should check appropriate box on whether he wants to request an immigration judge review of this custody determination



- d. Form must be signed by subject and by supervisor (SDDO or higher) and served by officer
 - e. Must be served **within 48 hours** of subject being taken into ICE custody. Date and time of service is noted on form.
7. Notice to Appear (NTA), I-862
- a. I-862 includes:
 - 1) Alien name, address, phone number, and A-File number
 - 2) A description of the allegations against the alien and the provision of law under which the alien is charged
 - a) Selection is to be made about the alien:
 - (1) You are an arriving alien
 - (2) You are an alien present in the United States who has not been admitted or paroled,
or
 - (3) You have been admitted to the United States, but are removable for the reasons stated below.
 - b) Two allegations establish alienage (not a USC; national and citizen of _____).
 - c) Method of entry or admission
 - d) Specific INA 212 or 237 charge(s)
 - 3) Date, time, and location of the removal hearing
 - 4) Notice to the alien of a right to representation at the alien's expense
 - 5) Notice that if the alien fails to attend the hearing, his removal will be ordered. This is order in absentia.
 - 6) Notice that the alien must notify the immigration court of any changes to their address or telephone number within five working days of a change using a form EOIR-33. If alien is not held in detention, notices regarding hearings and requests for interview with ICE are sent by mail.
[Pertains only to non-detained aliens]



- 7) Signed by serving officer showing the manner and language in which the Notice was served. Also signed by alien
- c. I-862 must be issued by SDDO or above (Issuing Officer).
8. Provide noncitizen with List of Free Legal Service Providers, located at the EOIR website [www.justice.gov/eoir/free-legal-services-providers], along with the I-862.
9. Certain documents must be filed promptly after taking noncitizen into custody.
 - a. NTA (I-862) must be served **on the alien within 48 hours** of the alien coming into ICE custody
 - b. Notice of Custody Determination (I-286) must be served **within 48 hours** of subject being taken into ICE custody
 - c. For aliens detained in ICE custody, the agency will submit the NTA to EOIR within 5 working days of the NTA being served on the alien, or upon the alien entering ICE custody, whichever is later.

Note: All documents, including I-862 and I-286, should be served when initially processing noncitizen as soon as the alien comes into ICE custody. It should not be a matter of practice to delay service until the deadline for each form unless ERO management determines the circumstances in the case warrant.

10. Removal proceedings are initiated when an NTA, I-862, is filed with the immigration court (EOIR)
 - a. Once the NTA is served on the EOIR the master calendar initial hearing cannot take place sooner than 10 days from the service date unless the alien requests an expedited hearing and signs the appropriate field on the NTA.
11. Notice to Appear/Bond and Custody Processing Worksheet, I-265
 - a. Presents factors that allow immigration official to set bond
 - 1) Form does not grant bond – only the factors that were taken into consideration when bond was set
 - b. Details the allegations as listed from the NTA – primarily used to determine legal sufficiency to support charges
 - c. Describes specific situations that argue for or against release, such as:



- 1) Whether an application for relief is pending
 - 2) Any prior record of bonding or breach of bond
 - 3) Health factors, time in United States, personal property, family in United States
 - d. Recommendation by officer either for voluntary departure or for issuing a Notice to Appear
 - e. Signed by ICE counsel approving legal sufficiency of charges listed on NTA
 - f. Must be signed by supervisor – SDDO or higher
12. Typically, the I-862, I-826, and I-286 are all served at the same time.
- a. All must be complete, including any conviction records if required for case
13. If OPLA attorney presenting removal case determines inadmissibility or deportability charges need amending, the OPLA attorney files an Additional Charges of Inadmissibility/Deportability form (I-261) with the EOIR to supplement the charges in the NTA.
14. Processing for a **stipulated removal** under § 240 – Alien concedes removability and waives a hearing. Under certain conditions aliens who are entitled to INA 240 Removal Proceedings may make a “Stipulated Request for Order, Waiver of Hearing” per 8 CFR 1003.25(b)

Note: Not all IJs or immigration courts may allow stipulated removals. IJ may want to ensure that alien who is entitled to hearing has it.

- a. File Notice to Appear (I-862)
- b. Provide List of Free Legal Service Providers.
- c. Alien must agree to these provisions:
 - 1) Admit that the factual allegations in the Notice to Appear are true and correct.
 - 2) Concede that he is removable or inadmissible as charged.
 - 3) Make no application for relief (no claim of asylum or any other benefit).
 - 4) Designate a country for removal



- 5) Acknowledge in writing that he understands the consequences of a request for a stipulated removal and enters the request voluntarily, knowingly, and , without any duress from the government.
 - 6) Sign a statement that he will accept a written order of removal as final disposition and waive any appeal of that order.
 - d. These are incorporated in a request for stipulation (using a local form).
 - 1) I-862 and request for stipulated removal is filed with EOIR
 - e. File Warrant of Arrest of Alien, I-200
 - f. Serve Notice of Custody Determination (I-286) on subject.
 - a) "Detained in custody" box must be checked.
 - b) "I do not request a redetermination..." box must be checked.
 - g. Notice of Rights and Request for Disposition (I-826), must be signed with "I admit" box checked.
 - h. OCC must review and agree to filing the stipulated request for removal. After filing with the EOIR the IJ must accept and agree to stipulation.
 - i. IJ then issues final order of removal.
 - j. Warrant of Removal/Deportation (I-205) is signed by FOD
 - k. Not all IJs will issue stipulated orders of removal. Consult with your OCC about the policy on filing requests for stipulated removal orders in your field office.
15. Hearing outcomes: After hearing the presentation of both the noncitizen's and the government's case, the IJ issues an order that can have one of these outcomes:
 - a. Proceedings are terminated
 - b. Alien is found removable and is ordered removed.
 - c. Alien is found to be subject to removal and is granted Voluntary Departure (VD) by the IJ with an alternate order of removal should the alien not abide by the VD grant.



- d. Case may be administratively closed. A case may be administratively closed because of a pending USCIS application, a technical error, prosecutorial discretion exercised by the court, if the subject is in the custody of another law enforcement agency, etc. The onus is on ICE to re-calendar the case should the administratively closed case need to be reopened.
- e. Alien is found removable and is granted other discretionary relief, such as:
 - 1) A grant of Withholding of Removal or Deferral of Removal under the Convention Against Torture (DCAT) – means the alien has proven a well-founded fear of persecution or torture if removed to a specific country
 - 2) Asylum – If alien is claiming fear, this will be handled by the IJ, who shall have exclusive jurisdiction over asylum applications filed by an alien who has been served a Notice to Appear (I-862), after the charging document has been filed with the Immigration Court – 8 CFR 208.2(b)
 - 3) Cancellation of Removal
- 16. The IJ's decision may be appealed by either the government (OCC/OPLA) or the noncitizen or both:
 - a. First level is to Board of Immigration Appeals (BIA) – appeal must be filed within 30 days of the IJ's order. . BIA can dismiss appeals, remand the case back to the IJ for further consideration, or conclude a decision in writing explaining the decision.
 - b. Second level is judicial review by U.S. Circuit Court of Appeals. Petition for Review must be filed within 30 days of BIA's decision.
- 17. Noncitizen may request stay of removal from EOIR or BIA in conjunction with either of the following:
 - a. Motion to Reopen – to allow presentation of evidence that was not previously available, filed within 90 days of the IJ or BIA order
 - or**
 - b. Motion to Reconsider – request that IJ or BIA reconsider its decision based on precedent decision, filed within 30 days of the order
- 18. Timelines for filing do not apply in Motions to Reopen on cases where the final order is in absentia
- 19. Travel documents to the noncitizen's country of origin, country of last residence, or the country where the noncitizen was ordered removed must be obtained from that country's consulate.



- a. If travel documents cannot be obtained for detained noncitizen within 90 days, case gets post-order custody review.
 - b. Noncitizen may also designate another country for removal. Destination country must agree to accept the noncitizen by the issuance of travel documents.
 - c. If unable to be removed at that time, and if noncitizen is being released, the noncitizen must be placed under an Order of Supervision (OSUP).
- 20. An order of removal carries with it a bar to legally applying to reenter the United States – 5 years, 10 years, 20 years, or permanently, depending on the section of the law.
- 21. Removal can occur when the order of removal becomes final (note that these are examples of some of the final order situations):
 - a. Final order of removal by the IJ where alien waived appeal rights.
 - b. Final order of removal by the IJ where the alien reserves right to appeal, but does not file the appeal within 30 days
 - c. Final order of removal by the IJ where alien reserved right to appeal, files an appeal, and then the BIA dismisses the appeal
- 22. Once 240 proceedings are completed:
 - a. Order of removal or grant of relief is issued by IJ. Written copy is provided for A-File.
 - b. Warrant of Removal/Deportation, I-205, is issued
 - 1) Form is served after the IJ decision becomes final and is signed by FOD
 - 2) Form is also used to verify the departure of the alien.
 - 3) Includes alien's photo and right index fingerprint
 - 4) Signatures of officer(s) doing fingerprinting and witness to departure
 - c. Warning to Alien Ordered Removed or Deported, I-294
 - 1) Outlines the time period alien is prohibited from applying to legally reenter the United States – 5, 10, 20 years or permanently



2) Served along with I-205

C. EPO 3: Recognize which noncitizens are ineligible for voluntary departure and identify the consequences and actions associated with a noncitizen failing to comply with the provisions of a Voluntary Departure order and the forms associated with a Voluntary Departure order.

1. Most noncitizens who are present in the United States and who are subject to 240 removal proceedings are eligible for voluntary departure, with these exceptions. Aliens who:
 - a. Are aggravated felons or terrorists and are deportable under INA § 237(a)(2)(A)(iii) or § 237(a)(4)(B)
 - b. Were previously granted voluntary departure after April 1, 1997
 - c. Violated terms of voluntary departure in the past 10 years
 - d. Are classified as “arriving aliens” (this can include LPRs who left the U.S. and are returning)

Note: Locate Form I-210 in the back of this section or in the separate handout and follow along.

2. If voluntary departure is granted by either the Field Office or Immigration Judge, complete an I-210 Voluntary Departure and Verification of Departure
 - a. Complete alien’s name, address, phone, A-number, and FINS number.
 - b. DO will complete the information indicating the date VD was granted, authority granting VD (IJ, BIA, ERO), expiration of VD, and departure type (at alien’s expense, government expense, under safeguards).
 - c. If the alien is granted an extension of the period of voluntary departure (not to exceed either 120 days if VD is granted prior to the conclusion of proceedings, or 60 days if VD granted at the conclusion of proceedings).
 - d. Provide details of manner of departure (transport details).
 - e. Alien and DO sign form.
 - f. Attach photo of alien and take alien’s right index fingerprint.
 - g. Two originals are prepared – one for alien, one for A-File.



- h. At departure, ERO escort (if VD granted “under safeguards”) compares photo and fingerprint on I-210 presented by alien to alien’s passport or other identity documentation and signs form.
 - 1) If unescorted, departure can also be verified using outbound records in DHS databases like ATSP and TECS MOD.
 - 2) Alien without escort must present I-210 to an immigration officer at point of departure or to U.S. Embassy in home country to verify departure
 - i. The I-210 provides official evidence of departure from the U.S.
- 3. Anytime an IJ grants voluntary departure, an alternate order of removal is also issued, which will go into effect if the alien fails to depart or fails to comply with any of the conditions of Voluntary Departure ordered by the Immigration Judge.
- 4. Failure to depart under a VD grant by the IJ
 - a. If alien fails to depart on or before the date specified in the order, alternate order of removal becomes effective. If alien is removed under order of removal, he or she is subject to 10-year bar to apply for admission.
 - b. Alien is considered “fugitive” by ICE – that is, an alien who has failed to leave the U.S. following the issuance of a final order of removal.
- 5. If the agency exercises the right to deny voluntary departure, or the alien violates the terms of the voluntary departure in lieu of proceedings, an NTA is issued and the alien is placed in 240 removal proceedings
- 6. Departure deadlines and extension granted by the agency (FOD)
 - 1) If the IJ grants voluntary departure prior to the conclusion of proceedings under INA 240B(a), statutory maximum period to depart is 120 days.
 - 2) If the IJ grants voluntary departure at the conclusion of proceedings under INA 240B(b), statutory maximum period to depart is 60 days.
 - 3) If alien was not granted the statutory maximum time to depart, ICE may extend the expiration, but not to exceed the maximum period, if alien proves need and provides evidence of intent to depart.



- 4) Decision by the agency on extension must be rendered quickly because the alien is subject to serious penalties for failing to depart by the specified date.

D. EPO 4: Distinguish between those noncitizens who are and are not entitled to removal proceedings.

1. In accordance with the Fourteenth Amendment, INA § 240 outlines removal hearing procedures before an IJ, the various levels of appeal, and possibilities for relief
2. Several categories of aliens are not entitled to 240 removal hearing before an IJ and are precluded from certain forms of relief that are only available in immigration court.
 - a. If an alien falls within one of the classes not entitled to a hearing, removal under these procedures carries the same consequences as a removal order issued in an immigration court.
 - b. Because a removal hearing and appeal are not available to these individuals, the removal is faster and requires fewer resources.
3. Aliens not entitled to a hearing are those subject to removal under the following sections of the INA:
 - a. Aliens subject to reinstatement of a previously issued removal order under § 241(a)(5)
 - b. Aliens subject to administrative removal under § 238(b) – Expedited Removal of Aggravated Felons

Note: In the field and elsewhere in this lesson, this is referred to as an Administrative Removal. In the law, it is Expedited Removal of Aggravated Felons.

- c. Aliens subject to expedited removal under § 235(b)
- d. Aliens subject to removal under § 217, the Visa Waiver Program
- e. Crewmembers, under § 252(b); stowaways, under § 235(a)(2) and 241(d)
- f. Aliens falling into distress and requesting removal at U.S. expense (§ 250)
- g. Alien witnesses or informants holding an S-5, S-6, or S-7 nonimmigrant visa (8 CFR 236.4)
- h. Aliens inadmissible on national security grounds (§ 235(c))



4. Alien who is entitled to a hearing in 240 removal proceedings may waive the right to a hearing before the IJ and agree to stipulated order of removal
5. In addition to those aliens not entitled to a removal hearing, many aliens waive their right to a formal hearing and elect, instead, to voluntarily return to their home country. Such voluntary return or voluntary departure is not a removal and does not include the same bars to legal reentry.

Note: This lesson focuses on the process of removal when the noncitizen is not eligible for or does not request voluntary departure.

Note that in many situations, the ERO Officer will be able to determine charges against the noncitizen and which section of the INA applies based on records checks before the officer ever arrests the noncitizen. In that case, most processing is completed in advance.

II. Demonstration

Demonstration 1: Antonio Romano

You learn that a state penitentiary inmate named Antonio Romano is to be released after serving a five-year sentence for robbery. An immigration detainer has been lodged, and the following information is given on the I-213.

Subject information

Name:	Antonio Romano
Date of Birth:	June 23, 1965
Place of Birth:	Rome, Italy
Mother's Name:	Marisa Rossi
Mother's DOB:	January 7, 1946
Mother's Place of Birth:	Potenza, Italy
Father's Name:	Allesandro Romano
Father's DOB:	December 6, 1943
Father's Place of Birth:	Torino, Italy
Date Subject Entered United States:	May 5, 2003
Location Subject Entered United States:	Detroit, Michigan airport
Reason for coming to the United States:	Married to USC and entering to live with his wife
Status at entry:	IR1/ immigrant



Address in United States:	112 ½ Beacon St., Boston, MA
Citizenship:	Italian

In May 1998, Romano met Nyota Fujioka, a USC who was studying in Italy. They married in Italy in May 2000 and moved to the United States in June 2003, when she took a management position with a multinational firm with offices in Boston.

Seven years ago, Romano was running short of money and wanted a gift for his wife, so Romano robbed a pub in Boston, MA, getting a total of more than \$7,000. Romano was arrested and charged with robbery. He was ultimately convicted and sentenced to five years in prison and is to be released soon.

1. Is Romano subject to removal from the United States? Why or why not?

2. If so, is he subject to removal under § 240?

3. Can any DIO issue a Notice to Appear?

4. Copies of the conviction documents were not available when the DIO took custody of Romano. How long can ICE have Romano in custody before it must serve an NTA on him?

5. Who has the burden of proof in this case—the noncitizen or the government?



6. If the IJ orders Romano's removal after a complete hearing where Romano was present, under what conditions could he file a Motion to Reopen?

7. What forms and other information are needed to begin the removal process in this case?

Demonstration 2: Miguel Garcia

Miguel Garcia was arrested on a shoplifting charge. In an interview, he acknowledged that he came to the United States from Mexico three weeks before and was present without admission. Searches in EAGLE and NCIC found no previous record. Garcia was issued an NTA and was detained by ICE. At Garcia's Master Hearing, he was granted Voluntary Departure by the IJ and was given 30 days to depart the country. Along with his VD order, the Judge also issued an Alternate Order of Removal. Garcia failed to depart the country and his VD order expired.

1. What factors allowed Garcia to be eligible for voluntary departure?

2. Which form is used to verify the Voluntary Departure of Garcia?



3. What happened when Garcia failed to depart within the 30-day departure period?

III. Student Practice

Felipe Sandoval was arrested by the Podunk County Sheriff on disorderly conduct and simple assault following a bar fight involving Zeta gang members (his associates) and other bar patrons. He says he is a lawful permanent resident, originally from Guatemala, who works as a window installer for Podunk Windows. Database searches find convictions within the past five years for domestic assault (sentenced to counseling plus restraining order), DWI, aggravated assault (sentenced to six months), sexual misconduct (one year with six months suspended).

1. If Sandoval is subject to removal from the United States, may he be placed in 240 proceedings? Why or why not?

2. What documentation must be completed to begin the removal process?



CONCLUSION

I. Summary of Main Ideas

The basic process for removal is under § 240, which provides for a hearing before an IJ, who may order the noncitizen's removal, allow voluntary departure, grant relief from removal, or terminate the proceedings.

The § 240 removal process is initiated when the Notice to Appear (NTA), I-862, is filed with EOIR. Other forms that must be used are Notice of Rights and Request for Disposition, I-826, and Notice of Custody Determination, I-286, along with Warrant of Arrest, I-200, and Bond and Custody Worksheet, I-265. Once there is a final order of removal, Warrant of Removal/Deportation, I-205, and Warning to Alien Ordered Removed or Deported, I-294 are served on the noncitizen.

Most noncitizens subject to 240 removal proceedings are eligible for voluntary departure. Exceptions include: aggravated felons or terrorists, arriving aliens, aliens previously granted VD or violated VD terms in past 10 years. An alternate order of removal is issued by the IJ along with the grant of VD. Maximum time allowed for departure is 60 or 120 days, depending on when in proceedings VD is granted.

The INA provides for non-hearing removal of noncitizens subject to removal under:

- § 241(a)(5) – Reinstatement of removal order
- § 238(b) – Expedited removal of aggravated felons
- § 235(b) – Expedited removal
- § 217 – Visa Waiver Program
- § 252(b) – Crewmen
- § 235(a)(2) – Stowaways
- § 250 – Falling into distress
- 8 CFR 236.4 – Alien witnesses or informants holding S-5, S-6, or S-7 visas
- § 235(c) – Aliens inadmissible on national security grounds

II. Integration

Although processing under § 240 is the principal means of handling a removal, there are specific conditions under which a noncitizen is not entitled to a hearing and can be given an order of removal by an authorized ICE officer. These will be discussed in the segments of this lesson that follow.

III. Objectives

You should now be able to:

- Outline the overall sequence of removal proceedings under § 240.
- Determine the forms, content, and process for removal under § 240 in accordance with the statutory requirements.



- Recognize which noncitizens are ineligible for voluntary departure and identify the consequences and actions associated with a noncitizen failing to comply with the provisions of a Voluntary Departure order and the forms associated with a Voluntary Departure order.
- Distinguish between those noncitizens who are and are not entitled to a removal hearing.

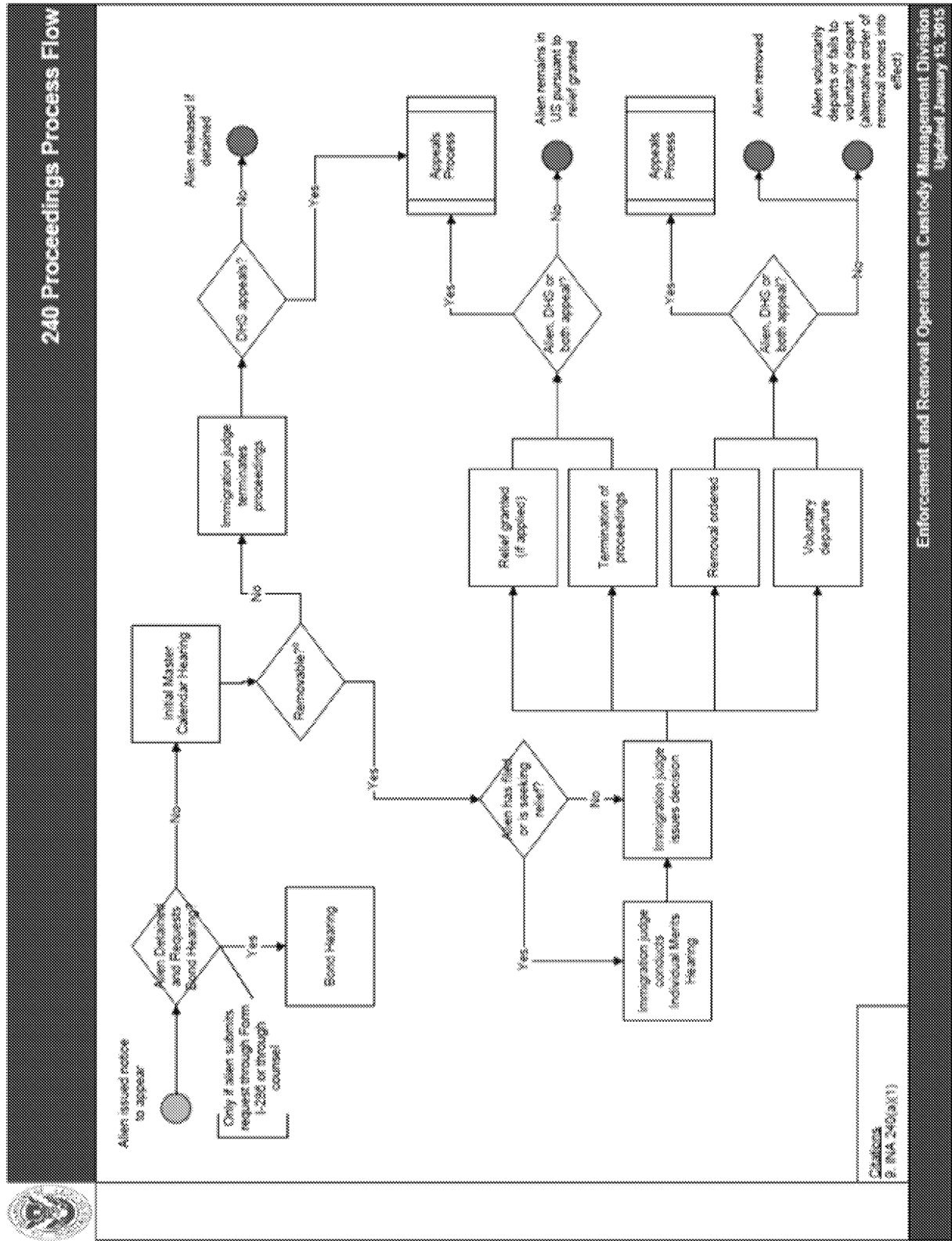
IV. Test or Final Activity

This information will be tested in the Case Disposition multiple-choice exam and in the Encounters to Detention PE.

Attachments: Segment 1

Forms are included in the Student Guide at the end of each segment. They are also provided as a separate packet so that students may refer to them during explanation and demonstration.

- Flowchart illustrating § 240 process
- When a Removal Order Becomes Administratively Final
- I-213 Record of Deportable/Inadmissible Alien
- I-862 Notice to Appear
- I-826 Notice of Rights and Request for Disposition
- I-200 Warrant of Arrest of Alien
- I-265 Notice to Appear/Bond and Custody Processing Worksheet
- I-286 Notice of Custody Determination
- I-205 Warrant of Removal/Deportation Sample
- I-205 Sample Completed for Fara
- I-294 Warning to Alien Ordered Removed or Deported
- I-210 Voluntary Departure and Verification of Departure





When a Removal Order Becomes Administratively Final

Type of Order	Removal Order Becomes Administratively Final	Check Before Removal
IJ orders removal <i>in absentia</i>	Date of IJ order	No Motion to Reopen (MTR) or Motion to Rescind the <i>in absentia</i> order has been filed (automatic stay)
IJ orders removal and alien waives appeal	Date of IJ order	IJ order indicates that appeal has been waived
IJ orders removal and alien reserves appeal but does not file timely	30 days after IJ's decision	No appeal has been filed
IJ orders removal, alien appeals, and BIA dismisses appeal	Date of BIA decision	No petition for review (PFR) has been filed with the Circuit Court of Appeals (discretionary stay)
IJ grants voluntary departure (VD), alien waives appeal and overstays VD period	Day after end of VD period	Alien has not departed or appealed; alien has not filed MTR
IJ grants VD and requires a VD bond, alien waives appeal, and alien fails to post bond within 5 days	6 days after IJ's order	Alien has not departed; alien has not, in fact, filed an appeal; alien has not filed an MTR <i>Alien who waives appeal may still file an appeal on grounds that the waiver was not valid; when an alien has filed an appeal, the order of removal does not become final until the BIA has dismissed the appeal.</i>
IJ grants VD, alien appeals, BIA dismissed appeal without reinstating VD	Date of BIA decision	No PFR has been filed.
IJ grants VD, alien appeals, BIA reinstates VD, and alien overstays VD period	Day after end of VD period	Alien has not filed an MTR or PFR; alien has not departed <i>Filing a PFR will automatically terminate the grant of VD and it may result in a stay of removal.</i>



I-213 Record of Deportable/Removable Alien



I-213_from
EAGLE.pdf

I-862 Notice to Appear



I-862_Notice_Appea
r.pdf

I-826 Notice of Rights and Request for Disposition



I-826_Request_Dis
position_eagle.pdf

I-286 Notice of Custody Determination



I-286_Custody_Dete
rmin.pdf

I-200 Warrant of Arrest of Alien



Revised Form I200
Warrant (OGC).pdf

I-265 Notice to Appear/Bond and Custody Processing Worksheet



I-265.pdf

I-205 Sample (Fara)



205previous_Fara.p
df

I-294 Warning to Alien Removed



I-294_Warning_Rem
oval.pdf



I-210 Voluntary Departure



I-210.pdf



Segment 2: § 241(a)(5) Reinstatement of Removal Orders

INTRODUCTION

I. Motivation

A key priority for ICE enforcement is the removal of noncitizens who obstruct immigration controls, including noncitizens who reenter the country illegally after removal.

II. Objectives

A. Terminal Performance Objective (TPO)

Given a noncitizen who is subject to removal, determine the process, procedures, forms, and form content so that the proper documentation is used for the required type of removal.

B. Enabling Performance Objective

EPO 4: Determine the forms, content, and process for reinstatement of a prior order of removal under § 241(a)(5), in accordance with statutory requirements.

III. Review of the Past

1. Under what situations is a noncitizen who is subject to removal not entitled to a hearing before an IJ?

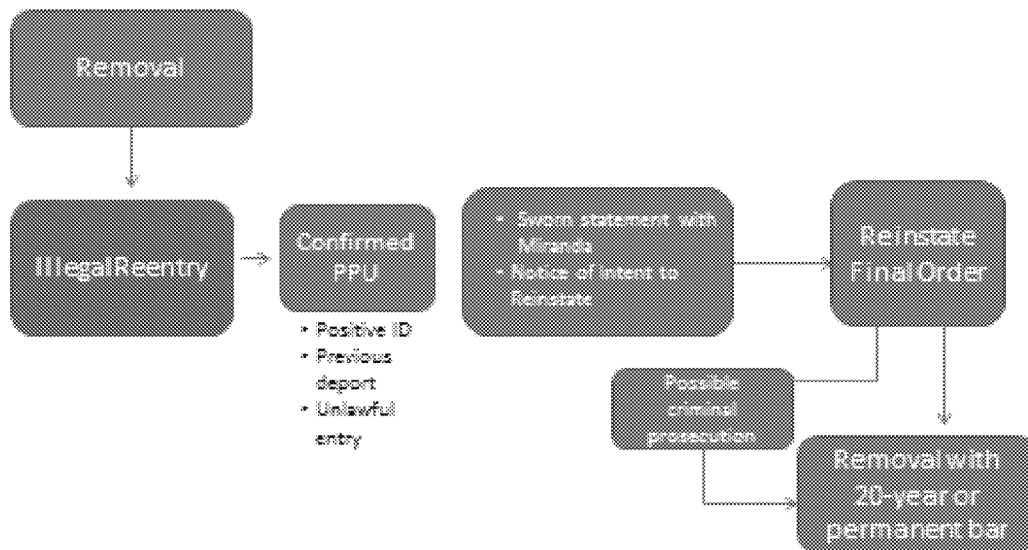


2. What set of three forms is used only for a § 240 removal process?

3. What is an I-205?

IV. Main Idea

Reinstatement – 241(a)(5)



This flowchart illustrates the process of reinstatement of a prior removal order under § 241(a)(5) of the INA where an alien who has been removed and then illegally reenters the U.S. If that individual is apprehended and his identity confirmed, he will be placed in a non-hearing removal process, reinstating the original removal order. He may also be subject to criminal prosecution for the offense of illegally reentering the country (8 USC 1326).



V. Agenda

- Forms, content, and process for reinstatement of a prior order of removal under § 241(a)(5)
- Questions on the appropriate forms, content, and process for various scenarios



INSTRUCTION

I. Explanation

A. EPO 5: Determine the forms, content, and process for reinstatement of a prior order of removal under § 241(a)(5), in accordance with statutory requirements. .

1. Applies to an alien who:
 - a. Illegally reenters the United States after being deported, excluded, or removed under a final order with a bar to reentry
 - b. Illegally reenters the United States after leaving the country of his own free will while under a final order of removal.
 - c. Illegally reenters the United States after leaving the country of his own free will and after the expiration of an IJ-granted voluntary departure period. (The voluntary departure alternate order of removal has become a final order.)
2. Does **not** apply to:
 - a. An alien who was granted voluntary departure, left the United States in compliance with that grant, and then illegally reenters the United States.
 - b. An alien who reenters legally after waiting until the bar to reentry expires and then is again found deportable.

Note: Note that identity of subject must be confirmed through fingerprints.

Because with a reinstatement the subject's case is not referred to an IJ, ERO Officers must evaluate all available evidence before determining that an alien was previously removed and illegally reentered the United States.

Many jurisdictions require that all reentry cases be referred to the AUSA for prosecution and/or declination of prosecution and subsequent TECS case management duties.

Ensure that the ROP is complete. Refer to Memorandum: Record of Proceedings in Reinstatement and Administrative Removal Cases (April 27, 2006).

3. Processing of reinstatement under § 241(a)(5) – in accordance with 8 CFR 241.8.



- a. To process an alien under § 241(a)(5), ERO Officer must clearly establish:
 - 1) **Positive identity:** The alien's identity, matched to an order of removal
 - 2) **Previous removal:** That the alien was previously excluded, deported, or removed or that he left while subject to a final order of removal
 - 3) **Unlawful entry:** That the alien did in fact reenter illegally
- b. If there is any question regarding these three factors, the noncitizen must be processed for removal under another applicable section: § 240 proceedings; § 238 administrative removal (if aggravated felony); or other appropriate section.
- c. Document on I-213 if the subject admits to having been previously excluded, deported, or removed.
- d. Obtain subject's A-File, or needed documents inside the file, and verify the subject's identity with IDENT/IAFIS and other records checks.
- e. A-File should contain the previously executed Warrant of Removal/Deportation (I-205) and Warning to Alien Ordered Removed or Deported (I-294) or Notice to Alien Ordered Removed/Departure Verification (I-296).
 - 1) Also must include the final order for which the alien was previously removed. ERO officers may be reinstating other removal orders other than IJ order (I-860, I-851A, etc.)
 - 2) Previously issued I-205 provides authority to detain.
- f. Interview the subject (using an interpreter if necessary) and record the subject's statement on the Record of Sworn Statement in Affidavit Form, I-215B, or Record of Sworn Statement in Administrative Proceedings, I-877.
 - 1) Because the I-215B may be used for criminal prosecution, Miranda warning must be given.
 - 2) If the subject declines to make a statement, that information is recorded.
 - 3) An ERO Officer conducting an interview with the subject may use Warning as to Rights – Interview Log, I-214, if pursuing a criminal case (the form includes a provision entitling individual to representation if he cannot afford it).



- g. Sworn statement must include this question and the alien's response to it: "Do you have any fear of persecution or torture should you be removed from the United States?"
(8 CFR 1208.31 – Reasonable fear of persecution or torture determinations involving aliens ordered removed under section 238(b) of the Act and aliens whose removal is reinstated under section 241(a)(5) of the Act)

Note: A brief overview of asylum and withholding of removal and a portion of the I-589 used to request these forms of relief are included at the end of the Student Guide. The topic is covered in more detail in the Special Status and Forms of Relief lesson.

- 1) Alien in removal under 241(a)(5) is not eligible for asylum but must be referred to asylum officer for reasonable-fear interview. While they are statutorily ineligible for asylum they may be eligible for Withholding of Removal or Deferral of Removal Under the Convention Against Torture.
 - 2) If reasonable fear is found by the asylum officer, the asylum officer refers case to the IJ for fear-only proceedings to adjudicate withholding or deferral of removal under Convention Against Torture claims. If reasonable fear is not found by the asylum officer the alien may still choose to have the IJ review the fear claim.
 - a) IJ reviews fear claim only
 - b) Withholding or deferral of removal are country specific.
 - c) An alien granted withholding of removal or deferral of removal under the Convention Against Torture is not given relief from removal. The alien can be removed to an alternate country.
- h. Prepare Notice of Intent/Decision to Reinstate Prior Order, I-871.
- 1) Subject is asked to acknowledge receipt of the form and to indicate whether he wishes to contest the determination.
 - 2) Subject may present information to rebut the determination and can review the government evidence.
 - 3) SDDO or higher reviews the information and determines whether further evaluation or investigation is warranted.
 - 4) If the decision is to reinstate the removal order, the SDDO or higher signs the bottom of the I-871.



4. In addition to reinstatement of the removal charge, alien may also be subject to criminal prosecution for reentering U.S. in violation of the order. An ROP must be created.
 - a. ROP is intended to allow the case to be defended in federal court.
 - b. ROP is compiled and stored in the A-File:
 - 1) Same documents are required for the A-File and kept on the left-hand side, distinguishing them from administrative forms, which go on the right side of the A-File.
 - 2) Recommended that two or more signed originals are made of forms for ROP and A-File and duplicates are identified as "duplicate original."
 - 3) ROP documents can then be removed and provided for use in court.
 - c. An index of the material in the ROP must be provided and a certification signed by deciding officer.
5. After the signing of the I-871, a new I-205 is issued, citing that removal is pursuant to § 241(a)(5).
 - a. I-205 includes subject's photo and fingerprint to compare to subject at time of departure. Departure is verified.
 - b. Subject is also issued I-294, indicating a 20-year bar, unless an aggravated felon, which would indicate a lifetime bar.

II. Demonstration

David Fara was convicted of sexual assault and is serving a five-year sentence at the state prison. He is due to be released.

Subject information

Name:	David Fara
Date of Birth:	May 26, 1983
Place of Birth:	Prague, Czechoslovakia
Mother's Name:	Darina Hanks Fara
Mother's DOB:	September 16, 1960
Mother's Place of Birth:	Prague, Czechoslovakia
Father's Name:	Lukas Fara



Father's DOB:	February 14, 1958
Father's Place of Birth:	Prague, Czechoslovakia
Date Subject Entered United States:	December 25, 2008
Location Subject Entered United States:	Unknown – illegal
Reason for coming to the United States:	Seeking work
Status at entry:	Illegal
Reason for arrest:	Conviction for sexual assault
Address in United States:	10 Leroy St., New York, NY
Citizenship:	Czech

During the interview, subject stated that he is a citizen of the Czech Republic who came to the United States to find work and entered by illegally crossing the northern border in December 2008 at an unknown location. He made his way to New York and found work at a bakery. Six years ago Fara was arrested after he was accused of rape by a woman who frequented the bakery. He was convicted of sexual assault. He has served his sentence and is about to be released from jail.

Fingerprint checks reveal the subject was previously removed to the Czech Republic in 2005 under the name David Fara.

You have located his A-File and acquired his previous order of removal.

1. Is Fara subject to removal from the United States? Why or why not?

2. If so, is he entitled to removal proceedings before an IJ?

3. What question must the officer ask as part of the sworn statement?



4. Could Fara be granted asylum? If not, what could the alien be granted?

5. What forms and other information would be needed to begin the removal process in this case?

6. Does all this material go into the A-File?

III. Student Practice

Gregor Milosovich, a citizen of Serbia, is about to be released from Iowa State Penitentiary after serving 18 months of a three-year sentence for assault and battery. When interviewed, Milosovich admitted that four years ago he entered by paying a trucker to smuggle him across the border.

Through biometrics and record checks it was determined that the Milosovich had been removed previously – in 2010 he had been removed under another name.

1. Is Milosovich subject to removal from the United States? Why or why not?



2. If so, is he entitled to removal proceedings before an IJ? Why or why not?

3. What question must the officer ask as part of the sworn statement?

4. Could Milosovich be granted asylum? If not, what could the alien be granted?

5. What forms and other information would be needed to begin the removal process in this case?

CONCLUSION

I. Summary of Main Ideas

Noncitizens who have been removed and then have reentered the United States illegally are subject to reinstatement of the original removal order and are therefore not entitled to a hearing before an IJ. They can also be criminally prosecuted for the reentry violation.

Before proceeding with a reinstatement, however, make sure you can document PPU: positive identification, previous deport, unlawful entry.



Forms used include:

- I-213
- For criminal prosecution I-215B and I-214, or for administrative proceeding I-877
- Copy of previous removal order
- Previously executed I-205, previously executed I-294 or I-296
- I-871 signed by SDDO or higher
- New I-205 and I-294

For criminal prosecution, an ROP must be created.

II. Integration

Another non-hearing procedure is that used for noncitizens convicted of certain offenses. Administrative removal under § 238(b) is the subject of the next segment of this lesson.

III. Objectives

You should now be able to prepare documentation for reinstatement of a removal order under §241(a) (5), in accordance with statutory requirements.

IV. Test or Final Activity

Knowledge of the forms, content, and process will be tested in the Case Disposition multiple-choice exam and in the Encounters to Detention PE.



Attachments

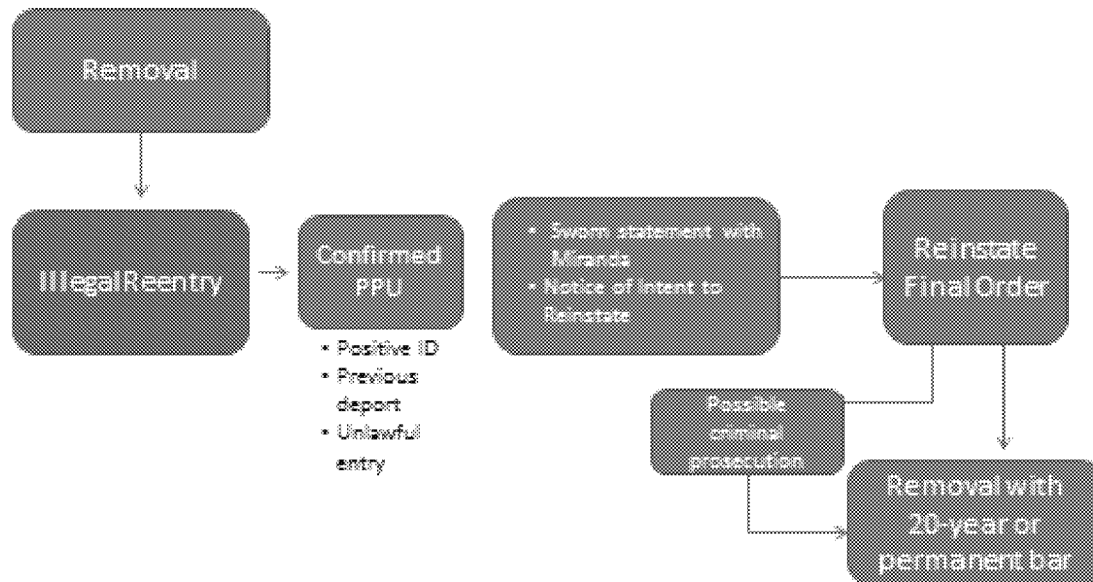
Forms are included in the Student Guide at the end of each segment. They are also provided as a separate packet so that students may refer to them during explanation and demonstration.

Handouts Segment 2: Reinstatement under § 241(a)(5)

- Flowchart illustrating Reinstatement Process
- I-215B Record of Sworn Statement in Affidavit Form
- I-214 Warning as to Rights – Interview Log
- I-877 Record of Sworn Statement in Administrative Proceedings
- I-871 Notice of Intent/Decision to Reinstate Prior Order
- I-213 Record of Deportable/Inadmissible Alien
- Previously executed I-205 Warrant of Removal/Deportation
- Previously executed I-294 Warning to Alien Ordered Removed or Deported [or I-296 Notice to Alien Ordered Removed/Departure Verification]
- I-205 Warrant of Removal/Deportation
- I-294 Warning to Alien Ordered Removed or Deported
- Index of Record of Proceedings for Reinstatement
- ROP Certification
- EAGLE Screen Shots on Reinstatement



Reinstatement – 241(a)(5)





I-871 Notice of Intent/Decision to Reinstate Prior Order



i_871.pdf

I-215B, Record of Sworn Statement in Affidavit Form



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I-214: Warning as to Rights – Interview Log



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I-877 Record of Sworn Statement in Administrative Proceedings



i_877.pdf

I-213



I-213_from
EAGLE.pdf

Previously executed I-205



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Previously executed I-294



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Previously executed I-296



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I-205 Warrant of Removal/Deportation



I-205.pdf

I-294 Warning to Alien Ordered Removed



I-294.pdf

Index of ROP for Reinstatement



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ROP Certification



ROP_certification.pdf

EAGLE Screen Shots for Reinstatement



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Segment 3: § 238(b) Administrative Removal Orders (Expedited Removal of an Aggravated Felon)

INTRODUCTION

I. Motivation

Administrative removals of aggravated felons is a top ICE priority. A noncitizen who is not an LPR and has an aggravated felony conviction can be removed without a hearing before an IJ. This places an important responsibility on the ERO Officer to ensure that all procedures are carefully followed.

II. Objectives

A. Terminal Performance Objective (TPO)

Given a noncitizen who is subject to removal, determine the process, procedures, forms, and form content based on requirements associated with removals under the applicable section of the INA.

B. Enabling Performance Objective (EPO)

EPO 5: Determine the forms, content, and process for an administrative removal under § 238(b) in accordance with the statutory requirements.

III. Review of the Past

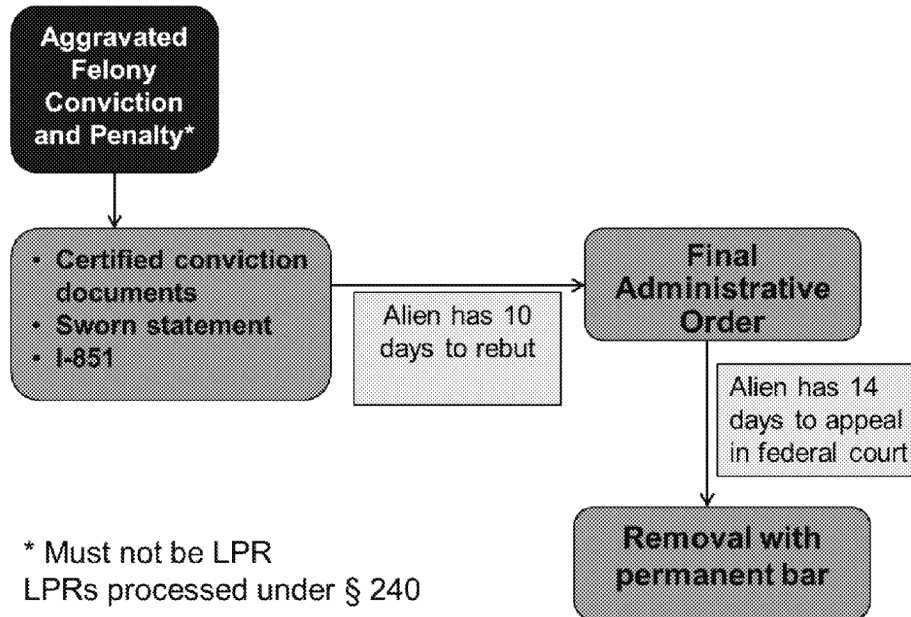
1. Under what situations is a removable noncitizen (who is not a LPR) not entitled to a removal hearing before an IJ?

2. What is a ROP, for what is it used, and where is it housed?



IV. Main Idea

Administrative Removal Under § 238(b) – Expedited Removal of Aggravated Felon



This flowchart illustrates the process of a removal under § 238(b) of the INA. Once an alien (who is not an LPR) has been convicted of an aggravated felony, he is subject to removal without a hearing under § 238(b). Particular care must be taken to adhere to procedures and ensure that all documentation is in order, with the alien's identity confirmed and conviction documents certified. When the final removal order is issued, there is a permanent bar to reentry.

V. Agenda

- Forms, content, and process for administrative removal in accordance with § 238(b)
- Questions on the appropriate forms, content, and process for various scenarios



INSTRUCTION

I. Explanation

A. EPO 6: Determine the forms, content, and process for an administrative removal under § 238(b) in accordance with the statutory requirements.

1. Applies to an alien who is not an LPR and who has a final conviction for an aggravated felony – as defined in INA § 101(a)(43)
 - a. Authorizes administrative proceedings – without a hearing before an IJ – to determine deportability under INA § 237(a)(2)(A)(iii) and to issue a removal order
 - b. § 238(c) states there is a “presumption of deportability” if an alien is convicted of an aggravated felony, as defined under 101(a)(43). The “presumption of deportability” includes EWI/PWA aliens
 - c. Cannot apply to an alien who is an LPR but may be used with a CR, a conditional permanent resident – such as the spouse or child of a U.S. citizen or LPR

Note: Conditional Permanent Resident status is granted by USCIS and would therefore needed to be rescinded by USCIS, as discussed in Immigrant Classifications lesson. Consult with ERO management, USCIS, and OCC for further guidance on processing Conditional Permanent Residents.

2. There must be both:
 - a. Conviction, a guilty plea, or *nolo contendere*, or alien has admitted sufficient facts to warrant a finding of guilt
 - and**
 - b. Judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.
3. Procedure for administrative removal under § 238(b):
 - a. ROP must be created.
 - 1) ROP is intended to allow the case to be defended in federal court.
 - 2) ROP is compiled and stored in the A-File and may be removed and provided for use in court.
 - b. Complete I-213, including evidence of subject's immigration status and full narrative.
 - c. Complete I-200



- d. Obtain certified copies of conviction documents to substantiate aggravated felony. Include memo from local OPLA or I-265 signed by OCC/OPLA approving legal sufficiency certifying that conviction rises to the level of an aggravated felony.
- e. Include additional information to substantiate the aggravated felony charge and conviction such as elements of the crime, transcript, presentencing investigation, colloquy or allocution on guilty plea
- f. Interview subject and record information on Record of Sworn Statement in Affidavit Form, I-215B or Record of Sworn Statement in Administrative Proceedings, I-877.
 - 1) If the subject declines to provide a statement, that fact is recorded on the form.
- g. Sworn statement must include this question and the alien's response to it: "Do you have any fear of persecution or torture should you be removed from the United States?" (8 CFR 1208.31 – Reasonable fear of persecution or torture determinations involving aliens ordered removed under section 238(b) of the Act and aliens whose removal is reinstated under section 241(a)(5) of the Act
- h. Also include all evidence (briefs and other documents) regarding deportability submitted by either party. Clear, convincing, and unequivocal evidence must support the deportability charge.
- i. An index must list all documents included in the ROP and accompanied by a certification signed by the deciding officer.

Note: The officer and supervisor signing the documents are responsible for the accuracy of the form content.

- j. Serve noncitizen with a Notice of Intent to Issue a Final Administrative Removal Order, I-851.
 - 1) The identity of the person who is served the Notice of Intent must be verified.
 - 2) I-851 must be verbally explained or a written translation provided in the alien's native language or a language he understands.
 - 3) Noncitizen must be provided with list of available free legal services.



- k. Noncitizen has opportunity (10 calendar days if served in person or 13 calendar days if served by mail) to inspect the government's evidence and offer a rebuttal to the deportation charge.
 - 1) Subject's written response is included in the A-File and ROP
- 4. Noncitizens subject to administrative removal under § 238(b) are only eligible for withholding of removal or Deferral of Removal under Convention Against Torture (DCAT) – not eligible for asylum (8 CFR 1208.31 Reasonable fear of persecution or torture determinations involving aliens ordered removed under section 238(b) of the Act and aliens whose removal is reinstated under section 241(a)(5) of the Act).

Note: A brief overview of asylum and withholding of removal and a portion of the I-589 used to request these forms of relief are included at the end of the Student Guide. The topic is covered in more detail in the Special Status and Forms of Relief lesson.

- a. Noncitizen in removal proceeding under 238(b) is not eligible for asylum but must be referred to asylum officer for reasonable-fear interview.
- b. If reasonable fear is found by the asylum officer, the asylum officer refers the case to the IJ for withholding-only proceedings to adjudicate withholding or deferral of removal under Convention Against Torture claims. If reasonable fear is not found by the asylum officer the noncitizen may still choose to have the IJ review the fear claim.
 - 1) Withholding or deferral of removal are country specific.
 - 2) A noncitizen granted withholding of removal or deferral of removal under the Convention Against Torture is not given relief from removal. The noncitizen can be removed to an alternate country.
 - 3) Withholding of removal does not apply to a noncitizen convicted of aggravated felony where the sentence was 5 years or more. The IJ may consider any other offense with a 5-year or more sentence as a "particularly serious crime" and determine they are ineligible for withholding of removal. These noncitizens may be eligible for DCAT
- c. Noncitizen may request withholding of removal under § 241(b)(3) by checking the box on the back of the I-851 or by requesting withholding in writing in response to I-851.
- d. I-851 issuing officer is SDDO or higher



5. A deciding service officer issues a Final Administrative Removal Order, I-851A.
 - a. Deciding officer (signs I-851A) may not be the same person as the issuing officer (signs I-851)
 - 1) Deciding officer must be equal to or above the ranking of the issuing officer.
 - 2) The issuing officer is any officer authorized to issue an NTA.
 - b. Decision of deciding officer is not subject to appeal to Board of Immigration Appeals.
 - c. The alien has 14 days to file the petition for review with the U.S. Circuit Court of Appeals. The removal order cannot be carried out until the 14-day waiting period expires unless the noncitizen waives the 14-day period.
6. When noncitizen is to be transported for repatriation, serve the Warrant of Removal/Deportation, I-205.
 - a. Serve Warning to Alien Ordered Removed or Deported (I-294), which is marked to inform alien that he may not return "at any time," because the removal is for an aggravated felony conviction. (permanent bar from the U.S.)
7. At any point in processing a case for administrative removal under INA 238(b), the deciding official may terminate the proceedings, have an NTA issued, and conduct the removal proceeding in accordance with § 240

II. Demonstration

Chris Tremblay is in prison, convicted for second degree murder, and about to be released.

Subject information

Name:	Chris Tremblay
Date of Birth:	April 15, 1984
Place of Birth:	Dawson City, Canada
Mother's Name:	Olivia Tremblay
Mom's DOB:	October 31, 1967
Mom's Place of Birth:	Charlottetown, Canada
Father's Name:	Michael Tremblay



Father's DOB:	July 4 1965
Father's Place of Birth:	Yellowknife, Canada
Date Subject Entered United States:	April 4, 2004
Location Subject Entered United States:	Niagra Falls, NY
Reason for coming to the United States:	Find work
Status at entry:	Illegal
Reason for arrest:	Conviction for 2nd degree murder
Address in United States:	31 Spooner St. Quahog, RI
Citizenship:	Canadian

Interview information and record checks confirm that the subject's parents were both born in Canada and have never lived in the United States. The subject says he entered the U.S. illegally and subsequently married a USC. His wife and child live in Quahog, RI. Records show his conviction on second-degree murder charges and a sentence of not less than 10 years. Tempplay is to be released soon.

1. Is Tremblay subject to removal from the United States? Why or why not?

2. If so, is he entitled to removal proceedings before an IJ?

3. What verification of the noncitizen's criminal record is required?

4. What other materials may be included to substantiate the aggravated felony charge?



5. Is Tremblay eligible for any type of relief from removal?

6. Who can authorize an administrative removal under 238(b)?

7. What forms and other information would be needed to begin the removal process in this case?

8. What documents must accompany the ROP?



III. Student Practice

Delia Alladin arrived Washington Dulles International Airport from the Philippines on a tourist visa. One month later, she was arrested on aggravated assault charges, she entered a guilty plea and was sentenced to three years imprisonment. She is about to be released.

1. Is Alladin subject to removal from the United States? Why or why not?

2. If so, is she entitled to removal proceedings before an IJ?

3. What verification of the noncitizen's criminal record is required?

4. What other materials may be included to substantiate the aggravated felony charge?

5. Is Alladin eligible for any type of relief from removal under 238(b)?



6. Who can authorize an administrative removal under 238(b)?

7. What forms and other information would be needed to begin the removal process in this case?

CONCLUSION

I. Summary of Main Ideas

A noncitizen who is not an LPR and has been convicted of an aggravated felony (as attested to by OPLA) and a penalty is subject to administrative removal without a hearing.

Because there is no hearing it is essential that the process be fully documented through the ROP and that the deciding officer in the case be of equal or higher position than the issuing officer.

Forms and documents used include:

- I-213
- Certified conviction documents and OPLA memo
- I-215B or I-877A
- I-851 Notice of Intent
- I-851A Final Administrative Removal Order
- Any evidence provided by the alien
- Any supplemental evidence relied on by government to support charges
- All admissible evidence regarding deportability
- New I-205 and I-294



II. Integration

There are a number of situations in which a noncitizen may be removed without benefit of a hearing. These are covered in the next segment of this lesson.

III. Objectives

You should now be able to prepare determine the forms, content, and process for an administrative removal of a noncitizen with an aggravated felony conviction under § 238(b), in accordance with the statutory requirements.

IV. Test or Final Activity

Knowledge of the forms, form content, and process will be tested in the Case Disposition multiple-choice exam and in the Encounters to Detention PE.



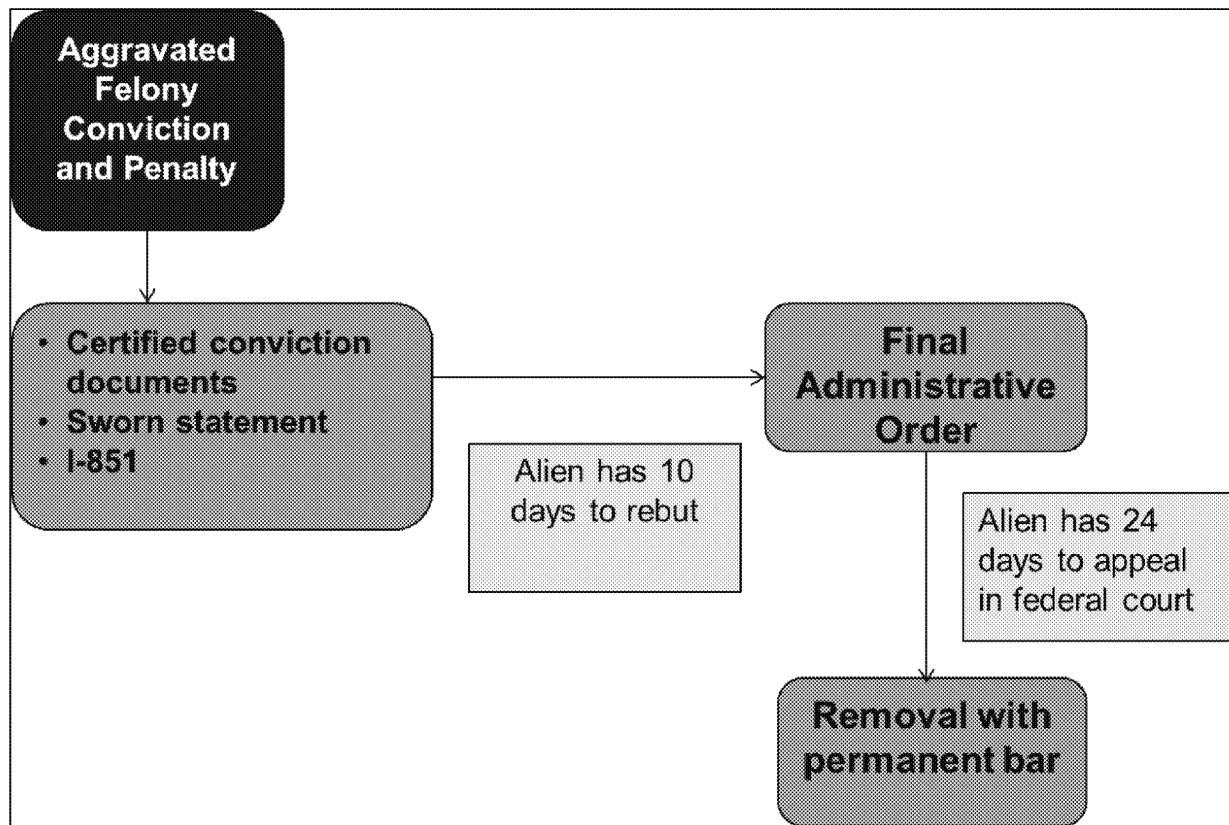
Attachments

Forms are included in the Student Guide at the end of each segment. They are also provided as a separate packet so that students may refer to them during explanation and demonstration.

- Handouts Segment 3: Administrative Removal under § 238(b)
 - Flowchart illustrating Administrative Removal process
 - I-200 Warrant of Arrest
 - I-213 Record of Deportable/Inadmissible Alien
 - Certified Conviction Documents
 - I-265 Notice to Appear/Bond and Custody Processing Worksheet
 - I-877 Record of Sworn Statement in Administrative Proceedings
 - Index of Record of Proceedings for Administrative Removal
 - ROP Certification
 - I-851 Notice of Intent to Issue a Final Administrative Removal Order
 - I-851A Final Administrative Removal Order
 - I-205 Warrant of Removal
 - I-294 Warning to Alien Removed or Deported



Administrative Removal Under § 238(b) – Expedited Removal of Aggravated Felon





I-213 Record of Deportable/Removable Alien



I-213_from
EAGLE.pdf

I-200 Warrant of Arrest of Alien



Revised Form I200
Warrant (OGC).pdf

Conviction documents (sample)



Sample conviction
documents.pdf

I-215B Record of Sworn Statement in Affidavit Form, with free text in narrative field



I-215B Form w-free
text in Narrative field

I-877 Record of Sworn Statement in Administrative Proceedings



i_877.pdf

Index of ROP for Administrative Removal



INDEX_admin_ROP.p
df

ROP Certification



ROP_certification.pd
f



I-851 Notice of Intent to Issue a Final Administrative Order



I-851.pdf

I-851A Final Administrative Removal Order



I-851A.pdf

I-205 Warrant of Removal/Deportation



I-205.pdf

I-294 Warning to Alien Removed



I-294_Warning_Rem
oval.pdf



Segment 4: Other Removals

INTRODUCTION

I. Motivation

The types of cases you will encounter will vary greatly depending on where you work – near the border, in a major city, near a seaport. The cases discussed here may be ones you process less frequently, but you will need to recognize the situations and how the cases should be handled.

II. Objectives

A. Terminal Performance Objective (TPO)

Given a noncitizen who is subject to removal, determine the process, procedures, forms, and form content so that the proper documentation is used for the required type of removal.

B. Enabling Performance Objectives (EPOs)

EPO 6: Determine the forms, content, and process for an expedited removal under § 235(b) in accordance with the statutory requirements.

EPO 7: Identify the removal procedures for administrative removal of: aliens entering under VWP, in accordance with § 217; crewmembers and stowaways; S-nonimmigrant visa holders; distressed aliens under § 250; and aliens inadmissible on national security grounds under § 235(c).

III. Review of the Past

1. Under what situations is a noncitizen who is subject to removal not entitled to a removal hearing before an IJ under § 240?



2. What is the Visa Waiver Program?

3. What is an S-nonimmigrant?

IV. Main Idea

Aliens found removable	Removal procedure
Expedited removal of illegal entrants within 14 days of entry, 100 miles of border	§ 235(b)
Entrants under Visa Waiver Program removable under § 237	§ 217
Alien crewmember overstay	§ 252(b)
Alien stowaway	§ 235(a)(2)
S-nonimmigrant found removable under § 237	8 CFR 236.4
Alien falling into distress	§ 250
Aliens inadmissible on national security grounds	§ 235(c)

Note that this is a high-level summary.

V. Agenda

- Forms, form content, and process for an expedited removal in accordance with § 235(b)
- Removals for other situations:
 - Aliens admitted to the U.S. under the Visa Waiver Program
 - Crewmembers
 - Stowaways
 - S-nonimmigrant visa holders
 - Aliens in distress
 - Aliens inadmissible on national security grounds



INSTRUCTION

I. Explanation

A. EPO 7: Determine the forms, content, and process for an expedited removal under § 235(b), in accordance with the statutory requirements.

1. Aliens processed as Expedited Removal under § 235(b) must falling to one of the two categories below:

- a. An alien may be processed § 235(b) if they meet all of the following:
 - 1) Not been admitted or paroled
 - 2) Inadmissible under 212(a)(6)(C) or 212(a)(7)
 - 3) Is encountered within 100 air miles of any international land border
 - 4) Has been encountered no more than 14 days after entering the U.S.

OR

- b. An alien may be processed under § 235(b) if they are an arriving alien at any U.S. port-of-entry who lacks proper entry document or has fraudulent document and misrepresents a material fact. (8 CFR 2.1 The term “arriving alien” means an applicant for admission comin or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry.)
 - 1) Must be inadmissible under § 212(a)(6)(C) or 212 (a)(7)
2. Aliens meeting the criteria for expedited removal who present themselves at a port of entry can be denied entry and sent back to the country they came from. Aliens encountered at a POE and processed under § 235(b) are usually denied entry and sent back to the country they came from by Customs and Border Protection. ERO may encounter these aliens if CBP is unable to remove them, which in many cases is due to the alien espressing fear of being removed from the U.S.
3. Aliens processed under § 235(b) who enter into ICE custody may be subject to mandatory detention.

Note: Recall of the definition of an arriving alien – “an applicant for admission coming or attempting to come into the United States at a port-of-entry.”



4. Expedited removal process should **not** apply to aliens who are:
 - a. Lawful permanent residents
 - b. Unaccompanied juveniles
 - c. Crewmembers or stowaways
 - d. Victims of spousal abuse
5. Procedures
 - a. Complete I-213 and perform record checks to establish that subject is inadmissible under § 212 (a)(6)(C) or 212 (a)(7).
 - 1) Record checks should include: CIS, TECS MOD, Arrival/Departure (SQ94), CLAIMS, NCIC, EARM, IAFIS
 - b. Interview subject, with a translator if needed, to determine if the subject has fear of being harmed if returned to country of origin or last residence.
 - 1) Interview session is conducted by one ERO Officer and witnessed by another ERO Officer.
 - 2) Record of Sworn Statement Proceedings under Section 235(b)(1), I-867A, is a sworn record of that interview.
 - 3) Jurat for Record of Sworn Statement in Proceeding Under Section 235(b)(1), I-867B, must be signed by both officers and the subject.
 - a) I-867B includes the question “Do you have any fear or concern about being returned to your country or being removed from the United States?”
 - c. Provide subject List of Free Legal Service Providers.
 - d. Complete Notice and Order of Expedited Removal, I-860 identifying the specific paragraphs of § 212 – 212(a)(6)(C) or 212(a)(7) – that provide the legal justification for removal.
 - 1) The subject’s specific violations are spelled out in a narrative.
 - 2) ERO Officer signs the top portion, the Determination of Inadmissibility.
 - 3) Both an ERO Officer and a designated official must sign the lower portion Order of Removal



- 4) ERO Officer must sign a Certificate of Service when he gives a copy of the form to the subject
- e. An alien who expresses a fear of persecution or an intention to apply for asylum is referred to a CIS asylum officer for a credible fear interview.

Note: A brief overview of asylum and withholding of removal and a portion of the I-589 used to request these forms of relief are included at the end of the Student Guide. The topic is covered in more detail in the Special Status and Forms of Relief lesson.

- 1) If the asylum officer does not find credible fear, the alien can still request the fear claim be reviewed by an IJ.
 - a) If the IJ does not find credible fear, removal under 235(b) proceeds
- 2) If the asylum officer or the IJ finds credible fear exists, the expedited removal final order will be vacated and an NTA, will need to be issued to initiate 240 removal proceedings.
- 3) Once an alien is placed into INA 240 proceedings the alien can file for asylum and the IJ can determine eligibility.

Note: On April 16, 2019, the Attorney General issued Matter of M-S-, 27 I&N Dec. 509 (A.G. 2019), holding that “[a]n alien who is transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear of persecution or torture is ineligible for release on bond. Such an alien must be detained until his or her removal proceedings conclude, unless he or she is granted parole.” The Attorney General expressly overruled Matter of X-K-, 23 I&N Dec. 731, 736 (BIA 2005), which previously authorized immigration judges to conduct custody redetermination hearings (“bond hearings”) for inland expedited removal cases—those aliens designated under INA § 235(b)(1)(A)(iii) who are subject to expedited removal, found to have a credible fear of persecution or torture, and referred for removal proceedings pursuant to 8 C.F.R. § 208.30(f).

- f. Provide subject Notice to Alien Ordered Removed / Departure Verification, I-296, signed by ERO Officer.
 - 1) Informs alien of restrictions imposed because of their violations – prohibition from entering U.S. legally for 5 years, 20 years, or permanently, depending on violation
 - 2) Includes photo and fingerprint of alien
 - 3) Form is signed by ERO Officer to confirm alien’s departure



B. EPO 8: Identify the removal procedures for administrative removal of: aliens entering under VWP, in accordance with § 217; crewmembers and stowaways; S-nonimmigrant visa holders; distressed aliens under § 250; and aliens inadmissible on national security grounds under § 235(c).

1. Administrative removal under INA § 217 (per policy 11070.1, Feb. 18, 2016)
 - a. Aliens who enter under the Visa Waiver Program (VWP) waive their right to a hearing.
 - 1) Program allows aliens from certain countries (see Immigration Law Pocket Field Guide) to enter as a visitor, without a visa, for stays of 90 days or less
 - 2) Waiver included in ESTA application and on I-94W
 - a) ESTA (Electronic System for Travel Authorization) records aliens entering under VWP at most airports and seaports
 - b) Waiver appears on the back of Arrival/Departure Record, Form I-94W.
 - b. Subject must be found removable under INA § 237.

Note: Although the lesson provides an overview of the forms for removals under § 217, you will not be tested on the form names or form numbers for processing under § 217. Instructions for completing the forms are on the ICE intranet.

- c. § 217 administrative removal procedure:
 - 1) Confirm alienage and immigration status
 - a) Do not use § 217 process for asylees, refugees, LPRs, or anyone with a pending application to adjust to LPR status
 - 2) Complete I-213 and I-200
 - 3) VWP Notice of Intent to Issue Final Administrative Removal Order (NOI) (71-058)
 - a) Signed by issuing officer. Alien is considered to have a final order of removal after signature and service.
 - b) Serving officer signs and notifies alien that he/she has 48 hours to respond to charges.



- c) If alien contests removability with request of asylum, withholding of removal, or protection under DCAT, refer to an IJ for an asylum, withholding, or DCAT hearing for a fear review only.
 - (1) VWP entrant who applies for asylum may be taken into ICE custody, pending an asylum hearing
- d) If alien contests removal on other grounds, serving officer must investigate and complete written report
- e) If alien refuses to sign NOI, witnessing officer must sign
- 4) Record of Proceedings (ROP) created and should be reviewed by OCC for legal sufficiency
 - a) Include ROP Checklist (71-059) and Certification of Authenticity of ROP (71-057) signed by district director (FOD or designee)
 - b) ROP, checklist, cover sheet added to left side of A-File
- 5) VWP Final Administrative Removal Order (71-060)
 - a) Signed by district director (FOD) or designee (per 8 CFR 1.2) – deciding official must not be the same person who issued NOI
 - b) Served by serving officer; witnessing officer signs if alien refuses
 - c) Deciding official must sign and alien must be served before removal order is final and alien can be removed.
- 6) VWP Notice to Alien Ordered Removed / Departure Verification (71-061)
 - a) 10-year bar for removal under § 217
 - b) 20-year bar for reinstatement or permanent bar for removal for aggravated felony

2. Removal of alien crewmembers, under § 252(b)



- a. Alien crewmembers are given a D nonimmigrant visa and granted conditional landing permit (I-95, not admitted) for up to 29 days upon arrival in the U.S. If ERO Officer determines that crewmember is unlikely to depart in that time, the crewmember's permit may be revoked using I-99.
- b. Crewmember may be taken into custody by ICE.
 - 1) Transport company that brought alien must cover cost of detention and repatriation.
 - 2) No removal charge is used.
- c. Crewmember who applies for asylum may be taken into ICE custody, pending an asylum hearing.
- d. An alien crewmember who was granted landing privileges on or after April 1, 1997, and who has not departed the U.S. shall be removed without a hearing – 8 CFR § 252.2(b).
 - 1) Local forms are used, according to field office policy.
 - 2) Alien is served with I-296 with a 10-year bar
- e. An alien crewmember who was granted landing privileges prior to April 1, 1997, and has not departed is subject to 240 removal proceedings as deportable under 237(a)(1)(C)(i). See 8 CFR § 252.2(b).

Note: INA 252(b) removals apply to aliens granted temporary landing under the D nonimmigrant visa and not necessarily to those who were admitted. Aliens in Transit (C-1 nonimmigrants) or Business (B-1 nonimmigrants) can come as crewmembers, but since those aliens are admitted under those visa classifications, 252(b) may not apply. Consult with OCC before processing anyone admitted as a crewmember for removal under 252(b).

- 3. Removal of alien stowaway under § 235(a)(2)
 - a. An alien who arrives as a stowaway is inadmissible under INA 212(a)(6)(D).
 - b. May be taken into custody and ordered removed by ERO Designated Official.
 - 1) Not eligible for hearing
 - 2) Alien is served I-296 with 10-year bar on reentry to the U.S.



- c. If stowaway cannot or will not provide information on transportation company, removal order must be signed by FOD, citing § 235(a)(2).
 - d. Stowaway who applies for asylum may be taken into ICE custody, pending an asylum hearing.
 - e. Stowaways who arrived prior to April 1, 1997, must be issued an NTA and processed under INA 240.
- 4. Removal of holders of an S-nonimmigrant visa
 - a. Alien who has agreed to provide information pertinent to a criminal investigation or national security
 - b. FOD may determine that alien is removable under one or more grounds under § 237(a) that either occurred subsequent to the alien's entry or was not disclosed prior to the alien's classification under the S visa.
 - c. Removal must be authorized by Secretary of Homeland Security with concurrence of Assistant Attorney General.
 - d. May apply for asylum
- 5. Alien in distress – removal under § 250
 - a. Aliens who are "in distress" or receiving public assistance who request to be repatriated but cannot afford to do so on their own may be returned at the expense of the U.S. government. Must be approved by FOD.
- 6. Removal of aliens inadmissible on security and related grounds
 - a. A special process exists for arriving aliens removable under INA § 235(c) where the alien is suspected of being inadmissible under INA § 212(a)(3)(A)(i)(I) or (A)(iii)(security related grounds). 8 CFR 235.8.
 - b. If you have cases processed under INA § 235(c), consult OPLA, National Security Law Division.



II. Demonstration

You talk to Julia Marquez-Garcia, a Mexican citizen who is serving a three-day sentence for public lewdness and is coming up on her release date tomorrow.

Subject information

Name:	Julia Marquez-Garcia
Date of Birth:	May 4, 1954
Place of Birth:	Tuxpan, Mexico
Mother's Name:	Maria Garcia
Mother's DOB:	February 14, 1929
Mother's Place of Birth:	Torreon, Mexico
Father's Name:	Howard Marquez-Cruz
Father's DOB:	March 16, 1932
Father's Place of Birth:	La Paz, Mexico
Date Subject Entered United States:	9 days ago
Location Subject Entered United States:	1 mile east of Presido, TX POE
Reason for coming to the United States:	To shop
Status at entry:	Illegal/swam the river
Reason for arrest:	Conviction for Public Lewdness
Address in United States:	None
Citizenship:	Mexico

When you interview the subject, she states she entered the United States nine days ago by swimming the river near a border town. She claims she came to the United States and started working as a dancer at topless bar. She was arrested in an undercover operation by the same border town local law enforcement agency.

1. Is Marquez-Garcia amenable to removal? If so, under what section of law? What, if any, is the most efficient section of the INA to remove this subject?



2. What statements must be taken from the subject and how are they documented?

3. Is any relief available to the alien in expedited removal proceedings?

4. What order of removal is given to the alien, and is there any future bar to admission?

Under what provisions might, or might not, each of the following be removable?

Two years ago, **Dora Ramirez** came to the United States as an au pair (J-1) to work for a family with two children. One of the parents lost his job, and they informed Dora they no longer needed her. The family then moved out of the area, owing Dora six months' salary and leaving her to fend for herself. She has been ill, in and out of the county hospital, and then living in a shelter. She wants to return to Honduras but does not have the funds to do so.



Not been admitted or paroled **Ramotoswo** was encountered by an ERO Officer at the county jail. He had been arrested for loitering and in an interview says he arrived in the United States 10 days ago after hiding on a Liberian freighter. He is terrified of being returned to Liberia because his family has long opposed the ruling party there. Is he amenable to removal from the United States? If so, under what section of law?

Gavin Longbottom, a citizen of the UK, claims he entered the United States a year ago to visit friends in Washington, DC. He was approved through the ESTA process, presented a valid passport, and was granted admission under the Visa Waiver Program. After about a month after he arrived he started picking up casual work as a carpenter. He found his skills were in demand and clients were happy to pay him in cash. Last month he was arrested on a drunk and disorderly charge. Is he amenable to removal from the U.S.? If so, under what section of law?

III. Student Practice

Estaban Montoya was encountered by CBP at the POE trying to enter the U.S. with forged documents that he had bought on the street in Mexico City. No criminal record or previous immigration encounters turned up in database searches.

1. Is Montoya amenable to removal from the United States? If so, under what section of law is the most efficient section of the INA to remove this subject?



2. What statements must be taken from the subject and how are they documented?

3. Is any relief available to the alien in expedited removal proceedings?

4. What order of removal is given to the alien, and is there any future bar to admission?



CONCLUSION

I. Summary of Main Ideas

Although the basic process for removal may begin with the issuance of an NTA and provide for a hearing before an IJ, many noncitizens encountered through contact with an LEA are subject to a non-hearing removal process – reinstatement of a previously issued order of removal; administrative removal of an aggravated felon under § 238(b), expedited removal under § 235(b), or other removal.

This lesson introduced the various forms and procedures that apply to each of these types of cases.

II. Integration

Noncitizens subject to removal orders may be detained and transported to an ICE detention facility or may be released on recognizance or bond with or without various restrictions. Many noncitizens subject to removal are eligible for voluntary departure – leaving the United States voluntarily without the bars to reentry associated with a removal order. The forms and procedures for these cases is covered in subsequent lessons.

Although this lesson focused on the paper version of the forms used with each case, the information for these forms will be captured using EAGLE, EADM, and EARM. However, in reviewing an A-File, you will have in front of you the printouts with original signatures.

III. Objectives

Segment 1

- EPO 1: Outline the overall sequence of removal proceedings under § 240..
- EPO 2: Determine the forms, content, and process for a removal under § 240 in accordance with the statutory requirements.
- EPO 3: Recognize which aliens are ineligible for voluntary departure and identify the consequences and actions associated with an alien failing to comply with the provisions of a Voluntary Departure order and the forms associated with a Voluntary Departure order
- EPO 4: Distinguish between those aliens who are and are not entitled to a removal hearing.

Segment 2

- EPO 5: Determine the forms, content, and process for reinstatement of a prior order of removal under § 241(a)(5) in accordance with statutory requirements.

Segment 3

- EPO 6: Determine the forms, content, and process for an administrative removal under § 238(b) in accordance with the statutory requirements..



Segment 4

EPO 7: Determine the forms, content, and process for an expedited removal under § 235(b) in accordance with the statutory requirements.

EPO 8: Identify the removal procedures for administrative removal of: aliens entering under VWP, in accordance with § 217; crewmembers and stowaways; S-nonimmigrant visa holders; distressed aliens under § 250; and aliens inadmissible on national security grounds under § 235(c).

IV. Test or Final Activity

You will be assessed on the Case Disposition multiple-choice exam and Encounters to Detention PE.

You will receive a copy of the Case Disposition Practice Test, which covers several lessons. Work through these questions prior to the Case Disposition Review. The instructor will explain the answers to the questions at that session.



Attachments

Forms are included in the Student Guide at the end of each segment. They are also provided as a separate packet so that students may refer to them during explanation and demonstration.

Handouts Segment 4: Other Removals

- Administrative Removal under INA § 235(b) (Expedited Removal)
 - I-213 Record of Deportable/Inadmissible Alien *[not included here]*
 - I-867A Record of Sworn Statement of Proceedings under Section 235(b)(1) of the Act
 - I-867B Jurat for Record of Sworn Statement of Proceedings under Section 235(b)(1) of the Act
 - I-296 Notice to Alien Ordered Removed/Departure Verification
 - I-860 Notice and Order of Expedited Removal
- Administrative Removal under INA § 217 (Visa Waiver Program)
 - I-213 Record of Deportable/Inadmissible Alien *[not included here]*
 - I-200 Warrant of Arrest *[not included here]*
 - 71-058 VWP Notice of Intent to Issue Final Administrative Removal Order
 - 71-059 Record of Proceeding Visa Waiver Removal – Checklist
 - 71-057 Certification of Authenticity of ROP
 - 71-060 VWP Final Administrative Removal Order
 - 71-061 VWP Notice to Alien Ordered Removed / Departure Verification
- I-589, Application for Asylum and for Withholding of Removal *[sample of form and overview]*



Administrative Removal under INA § 235(b) (Expedited Removal)

I-867A Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act



I-867A Sworn
Statement under Sec

I-867B Jurat for Record of Sworn Statement in Proceeding Under Section 235(b)(1)



I-867B.pdf

I-860 Notice and Order of Expedited Removal



I-860.pdf

I-296 Notice to Alien Ordered Removed / Departure Verification



i_296.pdf

Administrative Removal under INA § 217 (Visa Waiver Program)

71-058 Notice of Intent to Issue a Final Administrative Removal Order



form71-058_VWP_N
OI.pdf

71-059 Record of Proceeding Visa Waiver Removal – Checklist



form71-059_VWP_R
OP_Cklist.pdf



71-057 Certification of Authenticity of the Records of Proceedings



form71-057_ROP_certificate.pdf

71-060 VWP Final Administrative Removal Order



form71-060_VWP_Removal_Order.pdf

71-061 VWP Notice to Alien Ordered Removed/Departure Verification



form71-061_Notice to Alien_Departure.pdf

Asylum

I-589, Application for Asylum and for Withholding of Removal *[sample of form and overview]*



I-589_p1_overview.pdf

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

APR 27 2006

MEMORANDUM FOR Field Office Directors and Special Agents in Charge
FROM: John P. Torres
Director, Office of Detention and Removal Operations
Marcy M. Forman
Office of Investigations
SUBJECT: Record of Proceedings in Reinstatement and
Administrative Removal Cases

Handwritten signature of John P. Torres.

Handwritten signature of Marcy M. Forman.

Purpose

Section 241(a)(5) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1231(a)(5) (2000), provides the Attorney General with authority to reinstate a previously executed removal order with respect to aliens who illegally reenter the United States.

Section 238(b) of the INA, 8 U.S.C. § 1228(b) (2000), provides the Attorney General with the authority to administratively remove certain criminal aliens.

This memorandum will standardize the practice in preparing and preserving records of proceedings (ROP) in these matters. This practice will allow these cases to be defended more successfully in federal courts.

Background

8 C.F.R. §§ 241.8 and 238.1 implement the aforementioned sections of the INA. Guidance is also provided in Chapters 14.7 and 14.8 of the Detention and Deportation Officer's Field Manual, which sets forth the procedure for reinstating a final order, the content of the ROP, and the manner of certifying a reinstatement case for judicial review. See also the Administrative Removal Proceedings Manual (M-430), Appendix 14-1 for guidance on preparation of the record in administrative removal proceedings. This memorandum reinforces guidance already in place and provides supplementary instructions to both Field Office Directors and Special Agents in Charge on how to properly create the administrative record or the ROP in reinstatement and administrative removal cases.

Discussion

A. Reinstatement:

The deciding officer (DO) must maintain a permanent ROP in each case where a Notice of Intent/Decision to Reinstatement Prior Order (Form I-871) is issued. This is necessary to facilitate development of the administrative record for possible judicial review. Processing officers (PO) are required to create the ROP for presentation to the DO. Included in the ROP are those documents the Government will rely on to reinstate the prior order, and any other pleadings or evidence pertaining to the reinstatement. At a minimum, the ROP must include copies of:

<http://www.ice.gov>

1. Notice of Intent/Decision to Reinstate Prior Order (Form 1-871);
2. The prior administrative removal order;
3. Notice to Alien Ordered Removed/Departure Verification (Form 1-296);
4. The record check or fingerprint match, as reflected in the Integrated Automated Fingerprint ID System (IAFIS);
5. Any documentary evidence submitted by the alien;
6. Record of Sworn Statement or the alien's declination to provide such statement (Form 1-877A);
7. Record of Deportable/Inadmissible Alien (Form 1-213);
8. Previously executed Warrant of Removal/Deportation (Form 1-205); and
9. Previously executed Warning to Alien Ordered Removed or Deported (Form 1-294).

Additionally, the ROP must include any other evidence that the official relied upon to support the charges and any documents that rebut the alien's assertion that reinstatement is improper, such as a decision on an application for adjustment of status if it is related to reinstatement. See 8C.F.R. §241.8(a).

The issuing DO must certify the authenticity of the documents contained in the ROP. It is important that the original documents that were copied and placed in the ROP be kept in the A File for possible use in any criminal or civil action.

B. Administrative Removal:

Similarly, a ROP must be maintained where a Final Administrative Removal Order (Form 1-851 A) is issued. Again, POs are required to create the ROP for presentation to the DO. The ROP must include copies of:

1. Notice of Intent to Issue a Final Administrative Removal Order (Form 1-851);
2. Evidence of immigration status (CIS, RAPS, NIIS, etc.);
3. Record of Deportable/Inadmissible Alien (Form 1-213);
4. Record of Sworn Statement or the alien's declination to provide such statement (Form 1-877);
5. Final Administrative Removal Order (including any supplemental memorandum of decision)(Form 1-851 A);
6. Certified Conviction documents for commission of an aggravated felony;
7. Any response the alien offers;
8. Any evidence the Government relied upon to support the charges; and
9. All admissible evidence (briefs and other documents) submitted by either party respecting deportability.

The ROP should include all documents in support of the Notice of Intent to Issue a Final Administrative Removal Order. See 8 C.F.R. § 238.1. The original documents that were copied and placed in the ROP should be kept in the A-File and made available for use in any potential civil or criminal action.

In both instances, the PO's written findings and conclusions of law must be supported by reasonable, substantial, and probative evidence, and must also be included in the ROP. The ROP should be clearly labeled and placed in the left hand side of the A-file. Moreover, the ROP should contain an Index (see attached sample indexes) noting which documents are contained in the ROP. A blue ROP coversheet should be placed on top of the Index and the documents. Ultimately, the DO is responsible for the certification of authenticity of the ROP (see attached sample certification). The certification should be placed under the ROP coversheet. When feasible, DOs must maintain possession and control of the ROP during the pendency of any adjudication and ensuing legal challenge or during any credible fear proceedings. If the file is required elsewhere, the DO should retain a copy of the ROP. If necessary, the Department of

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Justice's Office of Immigration Litigation will directly contact the local U. S. Immigration and Customs Enforcement's Office of the Chief Counsel (OCC) in order to obtain a copy of the ROP, which must include the DO's certification.

If you have any questions on the aforementioned information, please contact your local OCC.

Attachments

INDEX

RECORD FILE

Alien Name

A00-000-0

- ☐ Certification.
- ☐ Notice of Intent/Decision to Reinstate Prior Order (Form 1-871).
- ☐ The prior administrative removal order.
- ☐ Notice to Alien Ordered Removed/Departure Verification (Form 1-296).
- ☐ The record check or fingerprint match.
- ☐ Any documentary evidence submitted by the alien.
- ☐ Record of Sworn Statement or the alien's declination to provide such statement (Form 1-877).
- ☐ Record of Deportable/Inadmissible Alien (Form 1-213).
- ☐ Warrant of Removal/Deportation (Form 1-205).
- ☐ Warning to Alien Ordered Removed or Deported (Form 1-294).
- ☐ Any other evidence relied upon to support the charges.
- ☐ Any documents that rebut the alien's assertion that reinstatement is improper.

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RECORD FILE

Alien Name

A00-000-0

- ☐ Certification.
- ☐ Notice of Intent to Issue a Final Administrative Removal Order (Form 1-851).
- ☐ Evidence of immigration status (CIS, RAPS, NIIS, etc.).
- ☐ Record of Deportable/Inadmissible Alien (Form 1-213).
- ☐ Record of Sworn Statement or the alien's declination to provide such statement (Form 1-877).
- ☐ Final Administrative Removal Order (including any supplemental memorandum of decision)(Form 1-851 A).
- ☐ Certified Conviction documents for commission of an aggravated felony.
- ☐ Any response the alien offers.
- ☐ Any evidence the government relied upon to support the charges.
- ☐ All admissible evidence (briefs and other documents) submitted by either party respecting deportability

UNITED STATES DEPARTMENT OF HOMELAND SECURITY
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

CERTIFICATION OF _____ :

1. I am a position title with U.S. Immigration and Customs Enforcement, United States Department of Homeland Security. I have served in this position since _____. My office is located in _____ and my responsibilities include the maintenance and creation of the official Record of Proceedings. I am the deciding officer in the matter of _____, file number A _____.
2. Annexed to this Certification is the official Record of Proceedings.

I hereby certify to the best of my knowledge and belief that the annexed documents are originals, or copies thereof, of the official Record of Proceedings. These documents relate to:

Subject:
File Number: A

Dated: _____

Name _____
Title _____