

# Alternate Orders of Removal

Detention and Removal Operations Training  
Division

*Lesson Plan*

*DRO 6130.01*

*December 2008*



**U.S. Immigration  
and Customs  
Enforcement**

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### Lesson Plan Overview

<b>Course Title</b>		Alternate Orders of Removal			
<b>Course Number</b>		6130.01			
<b>Course Duration</b>		3 Hours			
<b>Lecture Time</b>	<b>Lab Time</b>	<b>PE/Exam Time</b>	<b>Total Time</b>	<b>Programs</b>	<b>Applicable Portions</b>
3			3	DRATP	EPOs 1-3
2			2	DOTTP	EPOs 1-3
2			2	ALERT D	EPOs 1-3
<b>Course Description</b>		This course reviews the various types of alternative orders of removal available, the steps that should be followed to obtain an order of removal, and the actions necessary to effect a removal.			
<b>Terminal Performance Objective (TPO)</b>		Given an A-file, the Detention and Removal Assistant (DRA) will ensure all required documents are within the file and correct any deficiencies encountered, in accordance with policy and procedure.			
<b>Enabling Performance Objectives (EPO)</b>		<ol style="list-style-type: none"> <li>1. Identify the various methods that are available to secure an Order of Removal.</li> <li>2. Identify the case information used to determine the proper method of obtaining an Order of Removal.</li> <li>3. Identify the official that has jurisdiction over the different methods of obtaining an Order of Removal.</li> </ol>			
<b>Instructional Methods</b>		<ul style="list-style-type: none"> <li>• Lecture</li> <li>• Discussion</li> </ul>			
<b>Method of Evaluation</b>		<ul style="list-style-type: none"> <li>• None</li> </ul>			
<b>Classroom</b>		<ul style="list-style-type: none"> <li>• Classroom</li> </ul>			

### Lesson Plan Overview

<b>Requirements</b>	<ul style="list-style-type: none"> <li>• Writing Surfaces</li> <li>• PowerPoint equipped computer / projection station</li> </ul>
<b>Instructor Materials/ Resources</b>	<ul style="list-style-type: none"> <li>• Instructor Guide</li> <li>• PowerPoint presentation</li> <li>• Instructor station with presentation equipment</li> </ul>
<b>Student Materials/ Resources</b>	<ul style="list-style-type: none"> <li>• Participant workbook</li> <li>• Immigration and Nationality Act Sections 217, 235, 238, 240, 241 and 242 and related section of 8 CFR.</li> <li>• Forms: I-202, I-243, I-259, I-288, I-851, I-851A, I-862, I-871, I-867A, I-867B, I-860, Stipulated Removal Request and Section 217 Removal Order.</li> </ul>
<b>Instructor Special Requirements</b>	<ul style="list-style-type: none"> <li>• None</li> </ul>
<b>Student Special Requirements</b>	<ul style="list-style-type: none"> <li>• None</li> </ul>
<b>Role-Players</b>	None

**Revised by:**

(b)(6), (b)(7)(C) Course Developer/Instructor, Charleston ICE Academy

**Date**

December, 2008

**Summary of revisions:**

DACS references changed to reflect EARM.

**Reviewed by:**

(b)(6), (b)(7)(C) Branch Chief, Charleston ICE Academy

**Date**

January, 2009

(b)(6), (b)(7)(C) Section Chief, ICE Academy, Charleston

January 2009

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## **Introduction**

### **PURPOSE OF COURSE**

This course reviews the various types of alternative orders of removal available, the steps that should be followed to obtain an order of removal, and the actions necessary to effect a removal.

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### **ENABLING PERFORMANCE OBJECTIVES**

After completing this course you will be able to:

1. Identify the various methods that are available to secure an Order of Removal.
2. Identify the case information used to determine the proper method of obtaining an Order of Removal.
3. Identify the official that has jurisdiction over the various methods of obtaining an Order of Removal, ensure that the correct documentation was utilized in the correct manner to obtain an Order of Removal and identify ancillary tasks that must be completed subsequent to the Deportation Officer receiving the A-file.

## **Methods of Removal**

### **EPO 1**

Identify the various methods that are available to secure an Order of Removal.

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An order of removal is the primary documentation needed to remove an alien from the United States.

There are various avenues available to ICE officers from which an order can be obtained. The officer must be aware of the differences and methods that are appropriate for each individual case.

The Immigration and Nationality Act and associated regulations contain provisions for several alternate orders of removal:

1. Stipulated Removal

2. Administrative Order of Removal (under the Visa Waiver Program)
3. Reinstatement of Previous Removal Order
4. Judicial Removal of in conjunction with a criminal case
5. Administrative Removal of Aggravated Felons
6. Expedited Removal under Section 235(b)(1) of the INA
7. Crewman
8. Stowaways
9. S-Nonimmigrant Visa Holders
10. Section 250 Removals

## **Proper Method to Obtain an Order of Removal**

### **EPO 2**

Identify the case information used to determine the proper method of obtaining an Order of Removal.

### **General Requirements**

1. Alien must be classified as removable and meet the statutory requirements for the type of alternate order that you are seeking.
2. The aliens must be served with appropriate charging documents.
3. Alien is allowed the opportunity to rebut the charges.
4. The decision to issue an alternate order must be decided by the appropriate official.
5. Claims of fear (Asylum or Withholding or Deferral of Removal) must be properly addressed.

### **Jurisdiction, Documentation and Ancillary Tasks**

#### **EPO 3**

Identify the official that has jurisdiction over the different methods of obtaining an Order of Removal, ensure that the correct documentation was utilized in the correct manner to obtain an Order of Removal and identify ancillary tasks that must be completed subsequent to the Deportation Officer receiving the A-file.

#### **Stipulated Removal Order**

Allows the immigration judge to enter an order without a hearing and in the absence of the parties based on a review of the charging document, the written stipulation, and supporting documents, if any.

Black's Law Dictionary defines a Stipulation as: a voluntary agreement between opposing parties concerning some relevant point.

Over simplified, the stipulation is an agreement between the government and the alien (or the alien's representative) conceding the grounds of removability and waiving a hearing.



The intent (and benefit to ICE) of the Stipulated Removal Order is streamlined method of obtaining an unobstructed removal order without the need of a hearing. This can speed the removal process saving money for the government and time for the alien.

**a. Statutory Authority**

In accordance with Section 240(d), regulations were developed and posted as 8 CFR 1003.25(b). This Section provides the actual requirements and procedures to obtain the Stipulated Order.

Elements of 8 CFR 1003.25(b): an Immigration Judge may enter an order of deportation or removal stipulated to by the alien (or their representative if they have one) and ICE. This can be done without a hearing based on a review of the charging document, the written stipulation, and any supporting documents. If the alien is not represented, the Immigration Judge must determine if the alien's request for the waiver of hearing was made voluntarily, knowingly, and intelligently.

**b. Scope**

A stipulation may be used with all aliens in removal proceedings in pursuant to Section 240 of the INA.

Chronologically, service of the Notice to Appear (NTA) must be completed and served prior to the alien signing the actual "request for stipulation". The alien must already know the charges that they are agreeing to.

**c. Procedure**

**1) The alien is served with the charging document (I-862, Notice to Appear).**

**2) Prior to drafting the stipulated request, ensure the alien agrees to the following provisions:**

**An admission by the alien that all factual allegations contained in the charging document are true and correct as written;**

**Alien concedes deportability or inadmissibility as charged;**

**A statement that the alien makes no application for relief under the Act;**

**Alien designates country for removal under INA Section 241(b)(2)(A)(I)**

**A concession by the alien to the introduction of the written stipulation as an exhibit to the Record of Proceedings, (ROP);**

**A statement that the alien understands the consequences of the stipulated request and that the alien enters the request voluntarily, knowingly, and intelligently;**

**A statement that the alien will accept a written order of removal as a final disposition of the proceedings and;**

**Alien's waiver of appeal of the written order of removal.**

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- 3) Prepare the request for stipulation. No formal "G" or "I" form exists for this request.

Most offices use local templates. However, they must conform to the requirements of 8 CFR 1003.25(b) and include all provision indicated above (item 2).

A sample stipulated request is an appendix to the Detention and Removal Operations Policy and Procedure Manual. This manual may be found on the Intranet linked through the DRO website.

- 4) The stipulated request is signed by the alien and/or the alien's attorney and signed on behalf of the government by district counsel.
- 5) The I-862 (Notice to Appear) and the signed Stipulated Request are filed with EOIR (Executive Office of Immigration Review).
- 6) The Immigration Judge will review the submitted documents and render a decision. The IJ usually orders the alien removed. However, the IJ may reject this request if doubt exists that the alien entered into this agreement voluntarily, knowingly, and intelligently.

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d. Authorized Officials

The request for stipulation itself is not a removal order and cannot be used to remove an alien from the United States. An Immigration Judge must first accept and concur with the stipulation. The Immigration Judge may then issue a separate Order of Removal. As such, the official authorized to issue the actual Removal Order is the Immigration Judge.

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**Do not do a Stipulated Order of removal if the alien:**

Has legal representation unaware of the request for a stipulation (past or present/document or alleged);

Express any type of misgivings or comprehension issue;

If a citizen of any particular country whereby the means of ability to obtain a travel document would prove difficult and time consuming.

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**Administrative Order of Removal Section 217 of the INA –  
Visa Waiver Program**

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The Visa Waiver Program allows the visa requirements be waived for aliens from designated countries if seeking admission to the United State as a visitor for a period less than 90 days. To enter the United States under this program, the alien waives their right for a hearing. As such, ICE may issue an administrative removal order without the need for a hearing.

This waiver is included on the back page of the I-94W. The alien must sign that form indicating that they agree with the provisions of INA 217 (to include waiver of hearing) prior to the being admitted.

**a. Statutory Authority**

INA Section 217 provides for the establishment of the program, designation of the program countries, duration and termination of program countries, carrier agreements, method to dispute denials, and use of information technologies.

The Section of primary interest to ICE DRO Officers is 217(b) Waiver of Rights.

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*1) to review or appeal under this Act of an immigration's officers determination as to the admissibility of the alien as the port of entry into the United States, or*

*2) to contest, other than on the basis of an application for asylum, any action for removal of the alien.*

Other than by a claim of fear (asylum/CAT), the alien has no right for a hearing before an immigration judge in removal proceedings.

8 CFR 217.4(b) provides guidance on those aliens admitted under the provision of the Visa Waiver Program. This section contains the following elements:

1. An alien admitted to the United States under the provisions of Section 217 of the INA
2. Determined by a immigration officer to be deportable under one or more grounds listed in Section 237 of the INA
3. Shall be removed to their country of nationality or last residence
4. Such removal shall be determined by the District Director (Field Office Director) who has jurisdiction over the place where the alien was found
5. Shall be effected without referral to an immigration judge for a determination of deportability - except to alien who applies for asylum

**\*\* Removal under this Section is equivalent to a removal conducted under Section 240 of the INA**

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**b. Scope**

This administrative removal process is used for aliens admitted under the provisions of Section 217 of the INA (Visa Waiver Program).

It must be noted that aliens from Visa Waiver countries may have been admitted to the United States using a visa and not under the provisions of section 217. In those cases, the VWP administrative removal process may not be used.

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c. Procedures

1) Serve the alien the "Notice to Intent to Deport for Violating the Terms of your Admission under Section 217 of the INA".

No formal "G" or "I" form exists for this purpose. Many offices utilize local templates. Also an appendix to the Detention and Removal Operations Policy and Procedure Manual contains a sample Visa Waiver packet.

2) The "Order of Deportation Section 217" is signed by the Authorized Official. This is the actual removal order.

As with the Notice of Intent, no formal "G" or "I" form exists for this order.

Use local templates or the Visa Waiver Program sample in the Detention and Removal Operations Policy and Procedure Manual.

d. Authorized Officials

8 CFR 217.4 charges the District Director with determining removal under this Section. Following reorganization and within the Detention and Removal Program, this authority now resides with the Field Office Directors.

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**Reinstatement of a Previous Order of Removal**

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An alien that has been removed from the United States pursuant to a Order of Removal and then unlawfully reenters the United States may be subject to having their prior Order of Removal reinstated. This reinstatement will provide the basis for a subsequent removal.

An alien that unlawfully reenters the United States after removal may also face criminal charges under 8 USC 1326.

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**a. Authority**

Section 241(a)(5) of the INA states: *If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.*

8 CFR 241.8 further identifies our requirements. We must determine:

- 1) the alien has been subject to a prior order of removal and has physically been removed or departed
- 2) we must positively identify whether the alien is in fact the alien who was previously removed. (Positive identity may be accomplished by fingerprint comparison)
- 3) whether the alien unlawfully reentered the United States

If we determine that the alien is subject to removal under this section, we must provide written notice of this determination. The alien may contest our determination orally or in writing.

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**c. Scope**

An alien that has previously been ordered removed from the United States and has been physically removed or departed voluntarily under an order of removal. And that has unlawfully reentered the United States.

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**d. Procedure**

- 1) Determine that the alien was previously removed pursuant to a removal order. This is normally accomplished by a review a Prior Removal order and the previously executed Warrant of Removal (I-205).

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- 2) Identify the alien via fingerprint comparison of the encountered alien and print from the previously executed Warrant of Removal.
  - 3) Determine that the alien was not lawfully admitted.
  - 4) Serve the top portion of the Notice of Intent/Decision to Reinstate Prior Order (I-871).
  - 5) Bottom section of the Notice of Intent/Decision to Reinstate Prior Order (I-871) is completed and signed by the Authorized Official. Once completed, this is our authority to remove the pursuant to the previous removal order.
  - 6) After the authorized official signs the Form I-871 reinstating the prior order, the officer issues a new Warrant of Removal, Form I-205, in accordance with 8 CFR 241.2. The officer indicates on the I-205, in the section reserved for provisions of law, that removal is pursuant to section 241(a)(5) of the Act, as amended by IIRIRA.
  - 7) At the time of removal, the officer executing the reinstated final order must photograph the alien and

(b)(7)(E)

The officer executing the reinstated order must also serve the alien with a notice of penalties on **Form I-294**. The penalty period commences on the date the reinstated order is executed. Since the instant removal may be the alien's second (or subsequent) removal, the alien is subject to the 20-year bar; unless the alien is also an aggravated felon, in which case the lifetime bar applies. (Note that the alien being removed need not have been found deportable as an aggravated felon for the lifetime bar to apply, only to have been convicted of an aggravated felony.)

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executed at the time of reinstatement may prove essential in the event the reinstatement order is questioned at a later date.



8) The Authorized Official is charged by regulation and directive to maintain a Record of Proceeding (ROP) including all documents and evidence used in this decision.

The ROP shall contain the following:

- Form I-871
- the prior final order and executed warrant of removal (**Form I-205 or I-296**),
- records checks and fingerprint match as reflected in IAFIS, and
- any evidence provided by the alien and any additional documentation that rebuts the alien's assertion that reinstatement was improper
- the sworn statement or the alien's declination to provide such statement, or officer's attestation of the alien's refusal, (I-877)
- Record of Deportable Alien (**Form I- 213**).
- Previous Warning to Alien Ordered Removed or Deported (**Form I-294**),

e. Relief

If the alien expresses a fear of persecution or torture, the alien must be referred to an asylum officer, who determines whether the alien has a **reasonable** fear of persecution or torture. In referring the alien to the asylum officer, the processing officer provides the alien with Form I-589 and the appropriate list of providers of free legal services. If the asylum officer determines that the alien has a reasonable fear, the asylum officer will refer the case to an immigration judge, via an I-863, for a determination only of withholding of removal under section 241(b)(3) of the Act or Article 3 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (the Torture Convention), or for deferral of removal. Either party may appeal the decision of the immigration judge to the Board of Immigration Appeals.

f. Authorized Official

The deciding official is any officer authorized to issue a Notice to Appear, as listed in 8 CFR 239.1.

**Judicial Removal in Conjunction with a Criminal Case**

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The INA makes provisions for a United States District Court Judge to order and alien removed from the U.S. at the time of their sentencing.

a. Statutory Authority

Section 238(c) of the INA states: *a United States district court shall have jurisdiction to enter a judicial order of removal at the time of sentencing against an alien who is deportable*

This section provides for a U.S. District Attorney to file with the US District Court and serve the alien and DHS, prior to the commencement of the defendant's trial or entry of a guilty plea, a notice of intent to request a judicial removal. This action must be with the concurrence of the Director of DHS. If the court determines that substantial evidence exists to establish prima facie eligibility for relief from removal, the Director of DHS will provide the court a recommendation regarding such relief. The Order of Removal is issued at the time of sentencing. The District Court Judge's decision may be appealed by either party to the Circuit Court of Appeals.

Also, and probably more commonly used, is the provision under Section 238(c)(5) of the INA pertaining to Stipulated Judicial Orders of Removal. This provision allow the U.S. Attorney may enter into a plea agreement which calls for a alien, who is deportable, to waive right to a hearing and stipulate to the entry of a judicial order of removal.

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**b. Scope**

Section 238(c) of the INA, includes aliens in criminal proceedings in U.S. District Court and considered removable due to criminal offenses.

Section 238(c)(5) of the INA, which provides for a Stipulated Judicial Order of Removal, extends to not only the U.S. District Court Judge in both felony and misdemeanor cases, but also allows a U.S. Magistrate to enter such an Order in misdemeanor cases.

**c. Procedures**

- 1) The U.S. Attorney of the particular District will initiate (with the concurrence of the Commissioner) actions to obtain a Judicial Order.
- 2) Usually DRO will not be involved in the Judicial Order until after it is complete. The order should indicate the alien's country of choice for removal. If not, an Officer must make that determination based on file review, alien interview, etc.
- 3) In accordance with section 238(c)(3)(B), the Commissioner will provide written notice to the alien of the order of removal, and will designate the alien's country of choice for removal, and/or any alternate country, pursuant to section 241(b). The notice is accomplished by completing and serving Form I-294 or I-296.
- 4) In any case in which a judicial order of removal was sought by the particular United States Attorney and subsequently denied, the authority and discretion of the Attorney General to institute removal proceedings pursuant to section 240 of the Act is not precluded, and proceedings may be initiated and pursued upon the same ground of deportability or removal or upon any other applicable ground of inadmissibility, deportability or removability provided under section 212(a) or section 237(a).

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d. Authorized Officials

The authority to issue Judicial Orders of Removal resides with the U.S. District Court Judge in 238(c) cases and by the U.S. District Court Judge or U.S. Magistrate in stipulated cases under 238(c)(5).

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**Expedited Removal of Aggravated Felons – Section 238(b)**

The INA provides for the Expedited Removal by way of an Administrative Removal Order issued by ICE. An alien ordered removed under this section would not be placed before an immigration judge in 240 removal proceedings.

a. Statutory Authority

Section 238(b) of the INA states: the Attorney General may ... determine the deportability of such alien under section 237(a)(2)(A)(iii) (relating to conviction of an aggravated felon) and issue an order of removal pursuant to the procedures set forth in this subsection...

b. Scope

We must have evidence to support the finding that the individual:

- 1) is an Alien
- 2) has not been lawfully admitted for permanent residence, or has conditional permanent residence, or has conditional permanent resident status under section 216 of the Act
- 3) has been convicted (as defined in section 101(a)(43) of the Act, and has demonstrated by any of the documents or records listed in 3.41 of the chapter) of an aggravated felony and such conviction has become final
- 4) is deportable under section 237(a)(2)(A)(iii) of the Act, including an alien who has neither been admitted nor paroled, but who is conclusively presumed deportable under section 237(a)(2)(A)(iii) by operation of section 238(c) of the Act (Presumption of Deportable)

Simply stated the individual: must be an alien, must not be a Lawful Permanent Resident or have Conditional Resident status, must be convicted of an aggravated felony (and that conviction be final), and is applicable for those admitted or not.

**c. Procedure**

- 1) The Officer encountering the individual will establish alienage, removability, and determine if the alien's case meets the criteria for administrative removal under this section.
- 2) The Issuing Officer prepares or requests preparation of the charging document – Notice to Intent to Issue a Final Administrative Removal Order on Form I-851.
- 3) The Notice of Intent is served on the alien.
- 4) The alien a reasonable time as an opportunity to inspect the Government's evidence and rebut the charges by submitting a written response. If the Notice of Intent was served in person, the alien has 10 calendar days to respond. If served by mail, the alien has 13 calendar days to respond.
- 5) The alien a reasonable time as an opportunity to inspect the Government's evidence and rebut the charges by submitting a written response. If the Notice of Intent was served in person, the alien has 10 calendar days to respond. If served by mail, the alien has 13 calendar days to respond.
- 6) The Deciding Officer renders a decision recorded on the Final Administrative Removal Order, Form I-851A. (However, removal must, except where statutory bars apply, be withheld to a country where an alien is more likely than not to be persecuted or tortured.)

7) This decision (I-851A) is served on the alien. The statute prohibits execution of a Final Administrative Removal Order for 14 days after it is issued to give the alien an opportunity to apply for judicial review and requires that a record be maintained for that purpose. The alien may waive the 14 day period and the order may be executed without delay.

8) The only appeal allowed is a Petition For Review with Circuit Court of Appeals. The Petition for Review must be filed within thirty (30) days of the Administrative Removal Order being served on the alien.

\*\*\* It should be noted that at any time, at the discretion of the deciding official, the alien can be served with a Notice to Appear pursuant to Section 240, and presented to EOIR in lieu of Administrative Removal.

9) The case officer or DRA will prepare the Warrant of Removal (Form I-205) and the Warning to Alien Ordered Removed or Deported (I-294). And since this removal is based upon an aggravated felony conviction, the I-294 will be marked to indicate that they may not return "At any time .....".

10) The Authorized Official is charged by regulation and directive to maintain a Record of Proceeding (ROP) including all documents and evidence used in this decision.

11) The ROP shall contain the following:

- Form I-851
- Evidence of Immigration Status (CIS, RAPS, NIIS)
- Record of Deportable Alien (Form I- 213).
- the sworn statement or the alien's declination to provide such statement, or officer's attestation of the alien's refusal, (I-877).

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- Final Administrative Removal Order (including any supplemental memorandum of decision)(Form I-851A).
  - Certified Conviction Records for commission of the aggravated felony.
  - any and all evidence provided by the alien and any additional documentation that rebuts the alien's assertion that admin deport was improper.

d. Relief

A reasonable fear interview is triggered when an alien in administrative removal proceedings who has requested withholding of removal has been ordered removed. In such a case, upon service of the Final Administrative Removal Order (Form I-851A), the Deciding Service Officer (DSO) must immediately refer the case to an asylum officer for a **reasonable fear** determination under 8 CFR 208.31. In so doing, the DSO must ensure that the following steps are followed:

- 1) The alien is given a list of free legal services. The alien is advised that he or she may, at no expense to the government and without delaying the process, be represented by an attorney or accredited representative with whom he or she may consult before the interview.
- 2) The alien must sign and date two copies of Form M-488, Information About Reasonable Fear Interview, given to the alien and explained to him or her in a language he or she understands. The alien must sign acknowledging receipt of notice about the reasonable fear interview and about his or her right to counsel. If the alien refuses to sign Form M-488, the official who gives it to the alien must date and initial it and insert the notation "(name of alien) refused to sign" on the line for the signature of the person being referred to an asylum officer. One copy of Form M-488 is placed in the alien's A-file. The other is retained by the alien.

3) The appropriate asylum office point of contact is notified about the need for a reasonable fear interview and about any special considerations (e.g., the necessity of an interpreter and/or a request for a female or male interpreter or officer). The asylum office must also be given any other critical information (e.g., the alien's detention in a non-Service facility or at a remote location or the alien's transfer to a different detention site).

4) Copies of the completed Forms M-488, I-851 (Notice of Intent to Issue a Final Administrative Removal Order), and I-851A and any Notice of Entry of Appearance as Attorney or Representative (Form G-28) are faxed to the asylum office.

5) If the alien is detained by the ICE, arrangements are made in coordination with the asylum office point of contact for the reasonable fear interview and appropriate interview space. If there is no room for an interview where an alien in ICE custody is housed, arrangements should be made, where feasible, to move the alien to a location where the asylum officer can conduct the interview. If the alien is incarcerated in a federal, state, or local institution, the DSO or his or her support staff should, to the extent possible, assist the asylum office in locating suitable interview space.

The DSO and his or her support staff must make sure that the ROP does not leave the DSO's possession and control during the pendency of any adjudication and ensuing legal challenge or during any reasonable fear proceedings. The entire ROP should be photocopied and the duplicate ROP copy certified as a true copy of the DSO's administrative ROP. The certified copy of the ROP should then be made available to the appropriate asylum office *in the most expeditious way possible*.

Most of the time, the alien's A-file will be in the DSO's possession. In that event, it should be provided to the asylum office with the copy of the ROP. Otherwise, arrangements must be made to have the A-file sent to the asylum office immediately *in the most expeditious way possible*.



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The asylum officer must, except in exceptional circumstances, process reasonable fear cases within ten days, but the ten-day period begins only when the asylum officer receives the A-file and the certified copy of the ROP. Any delay in providing the asylum officer with these items will delay the processing of the case. The asylum office should, in most cases, notify the DSO the same day a reasonable fear decision is served on the alien. In unusual circumstances, notification may be made the following business day.

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In most cases, the asylum officer will serve any decisions on the applicant personally. However, if the DSO is willing and it would expedite the process, the DSO may serve the decision on the alien, with an asylum officer and interpreter (if necessary) available by telephone to answer any questions the alien may have.

If reasonable fear is found or, even if not found and the alien requests a review of that finding, the case is referred to an immigration judge (IJ), via an I-863. The DSO should obtain information about the status and outcome of such a case from the trial attorney representing the ICE. The asylum officer is also responsible for notifying the DSO if the asylum office has agreed to an applicant's request to withdraw from the reasonable fear proceedings, either before or after the asylum officer interviews the alien.

Departure must be enforced where appropriate, provided the 14-day period after issuance of a final order is past. Departure may be enforced only when reasonable fear is not found or withholding or deferral of removal is denied or terminated and any request for review or appeal has resulted in a negative determination or when the request for withholding or deferral has been withdrawn.

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e. **Authorized Officials**

The Issuing Officer is any ICE Officer listed in section 8 CFR 239.1 as authorized to issue Notices to Appear.

The Deciding Officer, per 8 CFR 238.1(a), is designated as the District Director, Chief Patrol Agent, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs, or another individual designated by the District Director(FOD), so long as that person is not the same person as the issuing officer.

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**Expedited Removal Pursuant to Section 235(b)(1) of the INA**

Section 235(b)(1)(A)(i) of the INA states: if an Immigration Officer determines that an alien arriving in the U.S. is inadmissible under section 212(a)(6)(C) or Section 212(a)(7)

the officer will order the alien removed without further hearing or review, unless the alien indicates an intention to apply for asylum, expresses a fear of persecution, a fear of torture, or a fear of return to his or her country.

Section 235(b)(1)(A)(iii) of the INA permits the Secretary of Homeland Security to apply ER to aliens in the U.S. not admitted or paroled and who cannot prove continuous physical presence in U.S. for 2 years immediately preceding date of determination of inadmissibility or at any time within the aforementioned period.

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a. Scope

For ICE initiated arrests, Expedited Removal under INA 235(b)(1) will include aliens present in the United States that have not been admitted or paroled and encountered within 14 days of their last entry.

It *will not* pertain to the following:

- Juveniles
- Cubans
- Eligible ABC Class members \*\*\*
- Crewmen or Stowaways

An alien that claims of fear of persecution or torture if removed, may still be amenable to ER. If an alien subject to ER indicates an intention to apply for asylum, expresses a fear of persecution, a fear of torture, or a fear of return to his or her country, refer the individual for a credible fear interview by an Asylum Officer. It is mandatory that these aliens be detained pending a final determination of credible fear.

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b. Procedure

1) The examining immigration officer will determine if the alien is eligible for administrative removal under this section:

Inadmissible under 212(a)(6)(C) or 212(a)(7)  
Encountered by ICE within 14 days of last entry  
And cannot:

- Have been admitted or paroled
- Juvenile
- Cuban
- An Eligible ABC Class member \*\*\*
- Crewmen or Stowaway

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2) The officer shall create a record of facts in the case and statements made by the alien.

3) The Sworn Statement will be accomplished by using forms I-867A and I-867B. The officer shall read (or have read) all information contained on the I-867A to the alien. This sworn statement is conducted in the Question and Answer format and must include the following:

Identity – true name, aliases, date and place of birth

Alienage – citizenship, nationality, residence and any possible claim to U.S. citizenship

Inadmissibility – facts of the case and specific grounds of inadmissibility

Date and Time of Entry – document accurate date and time to establish the 14 day time frame

4) The four questions on Form I-867B must be asked and recorded verbatim. The alien will read (or have read to them), sign, and initial each page of the sworn statement to include initialing any correction. The officer will execute the Jurat portion of the I-867B to include the alien's signature.

5) After obtaining supervisory approval, the officer will prepare and serve the I-860, Notice and Order of Expedited Removal, on the alien. When referring an ER case to the asylum office for a credible fear interview via the M-444, prepare the case as you would any other ER case, but you should neither sign the bottom part of the I-860 nor serve the I-860 on the alien.

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6) Normally, an alien is allowed at least 48 hours to consult with someone of his or her choosing before being interviewed by an asylum officer. The alien may elect, however, to waive that 48-hour requirement and request that the interview be arranged as soon as possible.

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7) Normally, an alien is allowed at least 48 hours to consult with someone of his or her choosing before being interviewed by an asylum officer. The alien may elect, however, to waive that 48-hour requirement and request that the interview be arranged as soon as possible.

8) Any removal order entered by an immigration officer is not considered final until reviewed by a second line supervisor.

**c. Authorized Officials**

Supervisory approval of removal orders. All expedited removal orders require supervisory approval before service upon the alien. By regulation, this approval authority is not to be delegated below the level of a second-line supervisor. Each Field Office may determine the exact level (minimum second-line supervisor or above) for this authority.

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**Crewman**

Crewmembers apprehended for violations of status fall into four categories:

A crewmember who has remained in the United States beyond 29 days without extension granted by the Service;

An overstay crewmember whose vessel or aircraft has departed but who has not been paid off or discharged in accordance with section 252(a)(2) of the Act;

A crewmember whose ship is still in port but who has engaged in activities inconsistent with the terms of the landing permit; or

A crewmember who has been refused a landing permit or whose landing permit was revoked, but who left the vessel in violation of section 252(b) of the Act.

Regardless of the type of violation, such crewmembers are not entitled to any hearing before an immigration judge, except for the purpose of resolving an asylum claim.

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a. Statutory Authority

INA Section 252(b) of the INA provides for the removal of crewmen found in the United States who do not appear bonafide or who have been found in violation of their status or who have disembarked the vessel in question without permission to do so. 8 CFR 252.2 provides instructions for the Officer regarding the revocation of conditional landing permits and or the removal of a crewman.

*...A crewman who was granted landing privileges on or after April 1, 1997, and who has not departed foreign on the vessel or aircraft of arrival, or on another vessel or aircraft if such permission was granted pursuant to 252.1(f), shall be removed without a hearing except as provided in 208.2(b)(1) of this chapter. ....*

The section goes on to say if the crewman is apprehended within five years of the violation he/she must be removed at the owner of the vessel; otherwise, the ICE pays for the removal.

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b. Scope

This administrative removal process is used for aliens admitted under the provisions of Section 252 of the INA and applies to crewmen seeking or who have obtained a conditional landing permit.

c. Procedures

1) Absent an asylum claim, a crewmember whose vessel remains in the U.S. may be issued a Notice of Revocation, Form I-99, and returned to the vessel for removal. This action would usually be completed by a CBP Officer.

2) If the vessel or aircraft has departed the U.S., an alien crewmember may be ordered removed by issuing a Notice to Detain, Remove or Present Alien, Form I-259, to the transportation line or agency representing the transportation line on which the alien served.

3) If removal occurs within five years of the crewmember's landing in the United States, the carrier is liable for the costs of removal. When carrier liability exists, complete and serve a Notice to Transportation Line Regarding Alien Removal Expenses, Form I-288. Expenses billable to a carrier may be tracked and recorded on a Record of Expenses Billable to Transportation Company, Form I-380. When the transportation company agent directly provides transportation and a GTR is not issued, an explanation should be included on the I-380, block 13. Upon removal, prepare Form G-251, serving the original on the carrier or agent, retaining a copy for the file and sending the remaining copies to the FOD office along with a copy of the I-380. In cases where a carrier fails or refuses to take custody of and remove an alien crewman subsequent to the issuance of Form I-259, the deportation officer should recommend the imposition of an administrative fine, through the National Fines Office.

4) If a crewmember requests asylum, the alien will be removed from the vessel or aircraft and place him or her in ICE custody. Provide an alien crewmember claiming asylum with the I-589. The crewmember has 10 days in which to file the application with the district director, during which time ICE will not remove the alien.

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If the crewmember files a timely asylum application, the FOD will refer the alien to the immigration judge using Form I-863, Notice of Referral to Immigration Judge. In this case, the officer executing the I-863 will check Box #2 and the appropriate box indicating the status of the crewmember when he or she made the asylum claim.

d. Authorized Officials

As per Section 252(b) of the Immigration and Nationality Act, any Immigration Officer is authorized to effect the removal of a crewman, barring asylum issues.

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**Stowaways**

A stowaway, whether or not landed, is not entitled to a removal hearing. Unless such case involves an asylum claim, the alien may be ordered removed by serving Forms I-259 and I-288 on the affected carrier.

a. Statutory Authority

INA Section 235(a)(2) provides for the removal of stowaways.

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b. Scope

This administrative removal process is used for individuals who have been brought to the United States unbeknownst and without the permission to the owners of the vessel and without the permission of the owners of the vessel.

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c. Procedures

1) Unless such case involves an asylum claim, the alien may be ordered removed by serving Forms I-259 and I-288 on the affected carrier.



3) Notify the appropriate asylum office that the stowaway requires a **credible fear interview**. If the asylum officer finds that the stowaway has a credible fear of persecution, he or she will refer the stowaway to the immigration judge using Form I-863, checking Box # 3 and the box indicating "Stowaway: credible fear determination attached". If the asylum officer determines that the stowaway does not have a credible fear of persecution, and the stowaway requests a review of that determination, the asylum officer will refer the stowaway to the immigration judge using Form I-863, checking Box #2.

4) If an adverse determination is made on the asylum claim by the immigration judge, the alien may be returned to the custody of the carrier for removal.

5) Serve the alien with Form I-296, checking the second block (10 year bar), and the I-259 and I-288 on the carrier.

#### d. Authorized Officials

As per 235(a)(2) any Immigration Officer may remove an alien classified as a Stowaway.

### S-Non-Immigrant Visa Holders

An S Nonimmigrant visa holder is an alien who has agreed to provide critical information that is pertinent to criminal investigations or national security. S Nonimmigrant Visa Holders are required, as a condition of classification and continued stay, to have executed Form I-854, Part B, Inter-agency Alien Witness and Informant Record, certifying that they have knowingly waived their right to a removal hearing and right to contest any removal action, including detention.

a. Statutory Authority

8 CFR 236.4 provides instructions for the conditions of classification, the determination of deportability and inadmissibility, removal procedures and withholding of removal procedures.

b. Scope

This administrative removal procedure may be used on individuals who have entered or are attempting to enter the United States with a S-5, S-6 or S-7 nonimmigrant visa and clearly belong to a class of aliens deportable under 237(a) or inadmissible under 212(a).

c. Procedures

1) The FOD having jurisdiction over the location of the alien, described in Section 101(a)(15)(S) of the Act, makes a determination that said alien is removable under one or more grounds under 237(a) that either occurred subsequent to the alien's entry or was not disclosed to the alien's classification under the S visa.

2) The FOD must notify in writing the Secretary of Homeland Security, the Assistant Attorney General, Criminal Division, and the relevant law enforcement agency to that effect. The Assistant Attorney General must appeal the decision within 7 days to the Deputy Attorney General, otherwise he/she shall have deemed to have concurred with the decision. The relevant law enforcement agency has no right of appeal.

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3) Once the concurrence has been obtained, either by default or active agreement, the FOD shall issue a Warrant of Removal and have the alien arrested and taken into custody. The removal order is prepared in memorandum form, similar to that used in Visa Waiver (VWP) cases.

4) Once the alien is served the Warrant of Removal, he/she may request withholding. Should this option be exercised, the alien will have 10 days to file an I-589. If the application is received timely, the FOD will prepare and forward an I-863 to the IJ for a limited hearing regarding the withholding issue.

5) The alien shall be removed to his/her country of citizenship or last residence. The agency that requested the alien's presence in the United States shall ensure the alien's departure and inform the FOD. The FOD shall, if necessary, oversee the alien's departure. The FOD shall, in any event notify the Commissioner of the alien's departure.

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d. Authorized Officials

The Removal Order must be issued by the FOD and authorized by the Secretary of Homeland Security with concurrence from the Assistant Attorney General.

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**Section 250 Removals**

Section 250 of the Act provides for the removal of an alien who is in distress or receiving public assistance and who desires to be removed from the United States. Such an alien may be returned to his native country, the country from which he came, the country of which he is a citizen or subject, or to any other country to which he wishes to go and which will receive him.

Removal in such cases may be at government expense, or in some instances, the alien's own consulate will arrange for removal. If the removal is at the expense of the United States Government, removal under section 250 of the Act is similar to actual deportation in that an alien so removed requires permission to reapply before he or she may be granted a visa or readmission to the United States.

This action, unlike the other removal processes discussed thus far, is initiated at the alien's request, not because of some malfeasance based on an action of the alien.

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a. Statutory Authority

INA Section 250 provides for the removal of aliens who have fallen into distress. 8 CFR 250 provides instructions to the Deportation Officer on how to utilize this process. Of interest to DRO is the section requiring ...*any alien so removed shall be ineligible to apply for or receive a visa or other documentation for readmission to the United States except with the prior approval of the Attorney General.*

b. Scope

This section of law applies to any alien, regardless of status who requests to be removed because they have fallen into distress or need

c. Procedures

1) The alien requesting removal under section 250 of the Act must file Form I-243, Application for Removal, with the FOD. The alien shall be required to obtain a travel document if necessary to effect his removal, but if he is unable to defray the costs, they may be paid from the appropriated funds. If an applicant is suffering from any mental disability, the examining officer shall determine whether the applicant sufficiently understands the proceedings to express a desire to be removed.

2) If the district director denies an application, there is no appeal of the decision. If the district director approves the application, Form I-202, Authorization for Removal, will be issued. When the applicant is an alien spouse, or parent, of a United States citizen who intends to accompany the applicant and is unable to pay the transportation costs, such costs may be assumed at Government expense as necessary to accomplish the removal of the applicant.

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3) If practical, removal cases may be joined to a deportation party. Care and maintenance is not provided until the applicant is actually joined to a deportation party or otherwise sent forward. When removal to Canada is authorized, consent for return to that country is obtained as in the case of a Canadian deportee, and a copy of Form I-243 furnished.

4) When the applicant has been removed, Form I-202 is endorsed by the departure port and returned to the authorizing FOD office. Any passport or other travel document in the possession of an alien being removed is endorsed as follows; "Rem 3/29/03 NYC sec. 250 A12 123 901". If there is a nonimmigrant visa, the endorsement is placed on the page containing the visa.

d. Authorized Officials

The alien must initiate this proceeding with a request filed on an I-243. The I-243 must be approved by the FOD. Many FODs prefer not to approve these cases, often seeking another formal removal process that will provide the statistics sought.

## **Summary**

You have been exposed to various alternative methods available to obtain an Order of Removal. These methods allow for a more expeditious path to obtaining a removal order. Each method must be applied properly to ensure compliance with regulations and protect the rights of the aliens.

Although most cases that you will encounter will probably be processed pursuant to Section 240, many cases are within the scope of one of our alternates

## **ENABLING PERFORMANCE OBJECTIVES**

Now that you have completed this course you should be able to:

1. Identify the various methods that are available to secure an Order of Removal.
2. Identify the case information used to determine the proper method of obtaining an Order of Removal.
3. Identify the official that has jurisdiction over the different methods of obtaining an Order of Removal.

## **TAKE AWAYS**

None

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## **LABORATORY**

None

## **Assessment**

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Students will be given a multiple choice, cumulative exam.

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### **PRACTICAL EXERCISE (PE)**

None

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### **EXAM**

DRATP

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## **Resources**

### **HANDOUTS**

- None

### **SUPPLEMENTAL RESOURCES**

- Detention and Removal Operations Policy and Procedure Manual (DROPPM) available at <http://onlineplus.uscis.dhs.gov/lpbinplus/lpext.dll/Infobase/ddm/ddm-1?f=templates&fn=document-frame.htm&2.0>

### **APPLICATION MATERIALS**

Participant workbook.