

was served was, in fact, the alien named in the notice.

[62 FR 10365, Mar. 6, 1997, as amended at 64 FR 8494, Feb. 19, 1999; 67 FR 39258, June 7, 2002. Duplicated from §238.1 at 68 FR 9838, Feb. 28, 2003, as amended at 68 FR 10355, Mar. 3, 2003]

PART 1239—INITIATION OF REMOVAL PROCEEDINGS

Sec.

1239.1 Notice to appear.

1239.2 Cancellation of notice to appear.

1239.3 Effect of filing notice to appear.

AUTHORITY: 8 U.S.C. 1103, 1221, 1229.

SOURCE: 62 FR 10366, Mar. 6, 1997, unless otherwise noted. Duplicated from part 239 at 68 FR 9838, Feb. 28, 2003.

EDITORIAL NOTE: Nomenclature changes to part 1239 appear at 68 FR 9846, Feb. 28, 2003, and at 68 FR 10355, Mar. 3, 2003.

§ 1239.1 Notice to appear.

(a) *Commencement.* Every removal proceeding conducted under section 240 of the Act (8 U.S.C. 1229a) to determine the deportability or inadmissibility of an alien is commenced by the filing of a notice to appear with the immigration court. For provisions relating to the issuance of a notice to appear by an immigration officer, or supervisor thereof, see 8 CFR 239.1(a).

(b) *Service of notice to appear.* Service of the notice to appear shall be in accordance with section 239 of the Act.

[62 FR 10366, Mar. 6, 1997, as amended at 67 FR 39258, June 7, 2002; 69 FR 44907, July 28, 2004]

§ 1239.2 Cancellation of notice to appear.

(a) *Prior to commencement of proceedings.* For provisions relating to the authority of an immigration officer to cancel a notice to appear prior to the vesting of jurisdiction with the immigration judge, see 8 CFR 239.2(a) and (b).

(b) *Ordering termination or dismissal.* After commencement of proceedings, an immigration judge or Board member shall have authority to resolve or dispose of a case through an order of dismissal or an order of termination. An immigration judge or Board member may enter an order of dismissal in

cases where DHS moves for dismissal pursuant to paragraph (c) of this section. A motion to dismiss removal proceedings for a reason other than those authorized by paragraph (c) of this section shall be deemed a motion to terminate and adjudicated pursuant to 8 CFR 1003.1(m), pertaining to cases before the Board, or 8 CFR 1003.18(d), pertaining to cases before the immigration court, as applicable.

(c) *Motion to dismiss.* After commencement of proceedings pursuant to 8 CFR 1003.14, government counsel or an officer enumerated in 8 CFR 239.1(a) may move for dismissal of the matter on the grounds set out under 8 CFR 239.2(a). Dismissal of the matter shall be without prejudice to the alien or the Department of Homeland Security.

(d) *Motion for remand.* After commencement of the hearing, government counsel or an officer enumerated in 8 CFR 239.1(a) may move for remand of the matter to the Department of Homeland Security on the ground that the foreign relations of the United States are involved and require further consideration. Remand of the matter shall be without prejudice to the alien or the Department of Homeland Security.

(e) *Warrant of arrest.* When a notice to appear is canceled or proceedings are terminated under this section any outstanding warrant of arrest is canceled.

(f) [Reserved]

[62 FR 10366, Mar. 6, 1997. Duplicated from part 239 at 68 FR 9838, Feb. 28, 2003, as amended at 69 FR 44907, July 28, 2004; 89 FR 46794, May 29, 2024]

§ 1239.3 Effect of filing notice to appear.

The filing of a notice to appear shall have no effect in determining periods of unlawful presence as defined in section 212(a)(9)(B) of the Act.

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF NONCITIZENS IN THE UNITED STATES

Subpart A—Removal Proceedings

Sec.

1240.1 Immigration judges.

1240.2 DHS counsel.