

any time thereafter and up to the time the alien becomes the subject of a Warrant of Removal, the alien may be arrested and taken into custody under the authority of a Warrant of Arrest issued by an officer listed in §287.5(e)(2) of this chapter. The decision of the Service concerning custody or bond shall not be administratively appealable during proceedings initiated under section 238 of the Act and this part.

(h) *Record of proceeding.* The Service shall maintain a record of proceeding for judicial review of the Final Administrative Removal Order sought by any petition for review. The record of proceeding shall include, but not necessarily be limited to: the charging document (Notice of Intent); the Final Administrative Removal Order (including any supplemental memorandum of decision); the alien's response, if any; all evidence in support of the charge; and any admissible evidence, briefs, or documents submitted by either party respecting deportability. The executed duplicate of the Notice of Intent in the record of proceedings shall be retained as evidence that the individual upon whom the notice for the proceeding 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; 76 FR 53791, Aug. 29, 2011; 81 FR 62355, Sept. 9, 2016]

PART 239—INITIATION OF REMOVAL PROCEEDINGS

Sec.

239.1 Notice to appear.

239.2 Cancellation of notice to appear.

239.3 Effect of filing notice to appear.

AUTHORITY: 8 U.S.C. 1103, 1221, 1229; Homeland Security Act of 2002, Public Law 107–296; 8 CFR part 2.

SOURCE: 62 FR 10366, Mar. 6, 1997, unless otherwise noted.

§ 239.1 Notice to appear.

(a) *Issuance of notice to appear.* Any immigration officer, or supervisor thereof, performing an inspection of an arriving alien at a port-of-entry may issue a notice to appear to such alien. In addition, the following officers, or officers acting in such capacity, may issue a notice to appear:

- (1) District directors (except foreign);
- (2) Deputy district directors (except foreign);
- (3) Chief patrol agents;
- (4) Deputy chief patrol agents;
- (5) Division chiefs;
- (6) Assistant chief patrol agents;
- (7) Patrol agents in charge;
- (8) Deputy patrol agents in charge;
- (9) Border patrol watch commanders;
- (10) Special operations supervisors;
- (11) Supervisory border patrol agents;
- (12) Directors of air operations;
- (13) Directors of marine operations;
- (14) Supervisory air and marine interdiction agents;
- (15) Service center directors;
- (16) Deputy service center directors;
- (17) Assistant service center directors for examinations;
- (18) Supervisory immigration services officers;
- (19) Supervisory immigration officers;
- (20) Supervisory asylum officers;
- (21) Officers in charge (except foreign);
- (22) Assistant officers in charge (except foreign);
- (23) Special agents in charge;
- (24) Deputy special agents in charge;
- (25) Associate special agents in charge;
- (26) Assistant special agents in charge;
- (27) Resident agents in charge;
- (28) Supervisory special agents;
- (29) Directors of investigations;
- (30) District directors for interior enforcement;
- (31) Deputy or assistant district directors for interior enforcement;
- (32) Director of enforcement and removal operations;
- (33) Field office directors;
- (34) Deputy field office directors;
- (35) Supervisory deportation officers;
- (36) Supervisory detention and deportation officers;
- (37) Directors or officers in charge of detention facilities;
- (38) Directors of field operations;
- (39) Assistant directors of field operations;
- (40) Port directors;
- (41) Assistant port directors;
- (42) Field operations watch commanders;
- (43) Field operations chiefs;

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(44) Unit Chief, Law Enforcement Support Center;

(45) Section Chief, Law Enforcement Support Center; or

(46) Other duly authorized officers or employees of the Department of Homeland Security or of the United States who are delegated the authority as provided by 8 CFR 2.1 to issue notices to appear, and who have successfully completed any required immigration law enforcement training.

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

[68 FR 35275, June 13, 2003, as amended at 70 FR 67089, Nov. 4, 2005; 81 FR 62355, Sept. 9, 2016]

§ 239.2 Cancellation of notice to appear.

(a) Any officer authorized by § 239.1(a) to issue a notice to appear may cancel such notice prior to jurisdiction vesting with the immigration judge pursuant to § 3.14 of this chapter provided the officer is satisfied that:

(1) The respondent is a national of the United States;

(2) The respondent is not deportable or inadmissible under immigration laws;

(3) The respondent is deceased;

(4) The respondent is not in the United States;

(5) The notice was issued for the respondent's failure to file a timely petition as required by section 216(c) of the Act, but his or her failure to file a timely petition was excused in accordance with section 216(d)(2)(B) of the Act;

(6) The notice to appear was improvidently issued, or

(7) Circumstances of the case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government.

(b) A notice to appear issued pursuant to section 235(b)(3) of the Act may be canceled under provisions in paragraphs (a)(2) and (a)(6) of this section only by the issuing officer, unless it is impracticable for the issuing officer to cancel the notice.

(c) *Motion to dismiss.* After commencement of proceedings pursuant to 8 CFR 1003.14, ICE counsel, or any offi-

cer enumerated in paragraph (a) of this section, may move for dismissal of the matter on the grounds set out under paragraph (a) of this section.

(d) *Motion for remand.* After commencement of the hearing, ICE counsel, or any officer enumerated in paragraph (a) of this section may move for remand of the matter to district jurisdiction on the ground that the foreign relations of the United States are involved and require further consideration.

(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.

[62 FR 10366, Mar. 6, 1997, as amended at 68 FR 35276, June 13, 2003]

§ 239.3 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 240—VOLUNTARY DEPARTURE, SUSPENSION OF DEPORTATION AND SPECIAL RULE CANCELLATION OF REMOVAL

Subpart A—Removal Proceedings [Reserved]

Subpart B—Cancellation of Removal

Sec.

240.21 Suspension of deportation and adjustment of status under section 244(a) of the Act (as in effect before April 1, 1997) and cancellation of removal and adjustment of status under section 240A(b) of the Act for certain nonpermanent residents.

Subpart C—Voluntary Departure

240.25 Voluntary departure—authority of the Service.

Subpart D—Exclusion of Aliens (for Proceedings Commenced Prior to April 1, 1997) [Reserved]

Subpart E—Proceedings To Determine Deportability of Aliens in the United States: Hearing and Appeal (for Proceedings Commenced Prior to April 1, 1997) [Reserved]

Subpart F—Suspension of Deportation and Voluntary Departure (for Proceedings