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EXPERT INSIGHT | Center for Homeland Security & Immigration

A PRIMER ON IMMIGRATION REMOVAL PROCEEDINGS

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TOPLINE POINTS

- ★ The Immigration and Nationality Act establishes the parameters for who may lawfully enter the United States. It also sets out the process for removing those aliens who violate the law after being lawfully admitted and those aliens who cross the border illegally.
- ★ The removal process, also known as deportation, is a civil matter and is not considered by the U.S. Supreme Court to be a cruel or unusual punishment. Removal proceedings are a fair process with constitutional protections and fundamental to a country's sovereignty. Determining who may enter and remain in one's country is a core tenet of a country's existence.
- ★ An America First administration must protect the homeland and national sovereignty, including by providing legal consequences to aliens who violate our immigration laws. The removal process is a necessary feature of this approach to the rule of law.

For all the complexities of U.S. immigration law, a simplified way to understand it is that the Immigration and Nationality Act (INA) established the rules, eligibility requirements, and numerical limits for aliens coming to the country legally. The INA also established the process for removing aliens from the country when they violate immigration law after being lawfully admitted or when they cross the border illegally. Supporters of open borders falsely characterize removal proceedings and the act of removing aliens to their home countries as cruel and even racist. In fact, the U.S. Supreme Court has held since [1893](#) that removal is not a punishment, but the necessary outcome after a fair process determines that an alien is no longer allowed to remain in the U.S.

There are two primary processes for removing aliens: expedited removal under [Section 235](#) of the INA and removal proceedings under [Section 240](#) of the INA.



Expedited Removal (INA Section 235)

In 1996, Congress created an expedited removal process to streamline the return of recent unlawful border crossers. Illegal aliens apprehended anywhere in the U.S. within two years of their unlawful entry can be immediately returned to their home countries without going before an immigration judge. However, the Trump Administration is the only administration to fully implement congressional intent by applying expedited removal to the fullest extent authorized by law.

One of the Biden Administration's earliest executive actions was to cancel this America First policy and defy congressional will by restricting the application of expedited removal to aliens apprehended within 100 miles of the border within 14 days of their unlawful entry. Despite this, the foundation of the law reflects a congressional decision that aliens subject to expedited removal are not entitled to a hearing before an immigration judge. This is because the goal of expedited removal is to impose consequences for unlawful entry and to deter future waves of attempted border crossings.

As [explained in a previous paper](#), aliens subject to expedited removal may thwart those efforts by falsely claiming asylum. Specifically, aliens who pass a very low threshold of "credible fear" may force the Department of Homeland Security to remove them from Section 235 proceedings and allow them to be processed in the overburdened standard removal proceedings under Section 240.

Removal Proceedings (INA Section 240)

Aliens not eligible for expedited removal, including those who passed a credible fear interview, are subject to removal proceedings before an immigration judge. Moreover, aliens who were lawfully admitted to the U.S. but have become removable (*e.g.*, committed a crime or overstayed their visas) are also placed in removal proceedings.

During removal proceedings, aliens appear before Department of Justice (DOJ) immigration judges and have the opportunity to present evidence to establish eligibility for humanitarian relief or some other immigration status that would allow them to remain in the country lawfully. Aliens in removal proceedings can obtain counsel to advocate on their behalf, but immigration law prohibits taxpayer dollars from being used for this purpose. The American people are represented in the proceedings by U.S. Immigration and Customs Enforcement attorneys who ensure that aliens provide credible evidence that legally substantiates their claims and eligibility for relief (defense) from removal.

At the conclusion of these proceedings, typically years after they were initiated, an immigration judge issues a ruling.



Appeals

If an alien receives an adverse opinion from the immigration judge, the alien may seek an appeal before the Board of Immigration Appeals (BIA), another arm of the DOJ. If an alien receives an adverse opinion from the BIA, the alien may seek an appeal before the U.S. Court of Appeals and, eventually, the U.S. Supreme Court. This appellate process also typically takes years to complete.

Conclusion

The Immigration and Nationality Act is our rulebook for the U.S. immigration system—from whom to allow to enter and whom to exclude. The ability to exclude aliens who fail to follow the rules is paramount to a healthy and functional immigration system. Whether applying Congress's framework to expeditiously remove aliens who have recently entered the U.S. illegally or aliens who were admitted but have violated a section of the rulebook, any alien who violates the rules must be removed. This concept should not be controversial, as the ability of a country to determine who is allowed to enter and who must leave is a necessary pillar of a country's sovereignty. Yet, we have failed to implement the will of the people by failing to execute the laws on the books. Indeed, about [2 million](#) aliens currently reside in the United States with final orders of removal. These are aliens who have had their day in court, exhausted all appeals, and have no legal right to remain. This population should be a high priority for removal by an America First administration.

