

REMOVAL PROCEEDINGS 101

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Overview

- ▣ Initiation of 240 Removal Proceedings
- ▣ Bond Hearings
- ▣ Master Calendar Hearings
- ▣ Individual Hearings

The Vernacular

- ▣ EOIR = Executive Office of Immigration Review
- ▣ BIA = Board of Immigration Appeals
- ▣ DHS = U.S. Department of Homeland Security, Immigration and Customs Enforcement
- ▣ CIS = U.S. Citizenship and Immigration Service
- ▣ INA = Immigration and Nationality Act
- ▣ NTA = Notice to Appear
- ▣ LPR = Legal Permanent Resident
- ▣ EWI = Alien who entered the United States without Admission or Inspection
- ▣ CIMT = Crime Involving Moral Turpitude
- ▣ PD = Prosecutorial Discretion

The NTA

- ▣ Includes Charges and Allegations
 - Allegations are the facts that provide the basis for the charge of removability
 - Charges are the legal basis for removal
 - ▣ INA § 212 for aliens who not been previously admitted and arriving aliens
 - ▣ INA § 237 for aliens who have been admitted
- ▣ 240 Removal Proceedings are Initiated when a NTA is Issued, *see* INA §§ 239 and 240.
- ▣ Jurisdiction Over 240 Removal Proceedings Vests with EOIR when NTA is Filed, *see* 8 C.F.R. § 1003.14

The NTA: Allegations

INADMISSIBLE

- 1) You are not a citizen or national of the United States;
- 2) You are a native and citizen of [Country];
- 3) You entered the United States on or about [date] at [border location];
- 4) You were not then admitted or paroled after inspection by an Immigration Officer;
- 5) [Any criminal grounds of inadmissibility]

ADMITTED BUT REMOVABLE

- 1) You are not a citizen or national of the United States;
- 2) You are a native and citizen of [Country];
- 3) You were admitted to the United States as a [status (e.g. LPR, B2 visitor, etc.) on [date];
- 4) [Allegation relating to ground of removability (e.g. criminal conviction, failure to maintain status, overstay, etc.)]

The NTA: Charges

COMMON CHARGES OF INADMISSIBILITY

- ▣ **INA § 212(a)(2) Criminal Grounds:** CIMT; any Controlled Substance violation; multiple convictions with aggregate sentence of 5 years or more; Drug Traffickers; Prostitution; Human Traffickers; Money Laundering; etc..
- ▣ **INA § 212(a)(6) EWI & Other Immigration Violations:** fraud; stowaways; smugglers; & student visa violators.
- ▣ **INA § 212(a)(7) Not in Possession of valid documentation:** Arriving aliens and other aliens who are "seeking admission" as defined by INA § 235(b)

COMMON CHARGES OF REMOVABILITY

- ▣ **INA § 237(a)(1) Immigration Violations:** Visa overstays, inadmissible at the time of entry or adjustment of status, alien smuggling, marriage fraud, etc.
- ▣ **INA § 237(a)(2) Criminal Grounds:** CIMT w/ in 5 years of admission or 2 at any time; convicted of aggravated felony (as defined by INA § 101(a)(43)), controlled substance offenses, firearms offenses; domestic violence; false claim to being a U.S. citizen, etc.

Bond and Bond Hearings

- ▣ When Your Client is Detained, First Determine:
 - Did DHS set a bond? If, so can the client post it?
 - Does the Immigration Judge have jurisdiction to grant a bond?
 - No Jurisdiction when subject to mandatory detention , *see* INA § 236 (c).
 - No Jurisdiction over arriving aliens, *see* INA § 235 and 8 C.F.R. § 1003.19.

240 Removal Proceedings: Overview

- ▣ Bifurcated Proceedings
 - Removability
 - Relief
- ▣ Burdens of Proof, *see* INA § 240(c)
- ▣ Detained vs. Non-Detained

The Master Calendar Hearing: Generally

- ▣ DHS Submits Evidence
- ▣ Take Pleadings
- ▣ Identify Relief
- ▣ Identify and Narrow Legal and Factual Issues
- ▣ Schedule hearings

The Master Calendar Hearing: Pleading and Identifying Relief

- ▣ Pleading
- ▣ Relief Before the Court:
 - Cancellation of Removal (LPR and Non-LPR), *see* INA § 240A.
 - Asylum/Withholding/CAT, *see* INA §§ 208, 241(b)(3), 8 C.F.R. § 1208.17
 - Voluntary Departure, *see* INA § 240B
 - *De Novo* Review of TPS, *see* 8 C.F.R. § 1244.11
 - NACARA, *see* INA § 203 and 8 C.F.R. § 1245.13
 - Former 212(c), *see* *INS v. St. Cyr*, 533 U.S. 289 (2001)
 - Adjustment or Re-Adjustment of Status, *see* INA §§ 245(a) and (i)
 - 212(h) Criminal Grounds Waiver, *see* INA § 212(h)
 - 212(i) Immigration Fraud Waiver, *see* INA § 212(i)
- ▣ NOT Relief Before the Court:
 - Continuances
 - Dismissal
 - Administrative Closure

Prosecutorial Discretion: Administrative Closure & Dismissal

- ▣ PD means that, though your client is removable as charged, DHS is willing to have proceedings administratively closed or dismissed without prejudice.
- ▣ DHS has the sole authority to exercise PD and its decisions to exercise PD are not reviewable by Immigration Judges or any other tribunal. *See Matter of E-R-M & L-R-M*, 25 I&N Dec. 520, 525 n.3 (BIA 2011) (“The only area in which judicial review of a prosecutorial decision is permitted is where an allegation is made that a charging decision was based on constitutionally prohibited reasons, such as race or religion.”); *see also Matter of Vizcarra-Delgado*, 13 I. & N. Dec. at 54 (“[I]n view of the separation of functions sought to be achieved by the Act, the question whether a proceeding has been improvidently begun is one which is addressed primarily to prosecutive discretion and should therefore not be of concern to [Immigration Judges] or this Board, whose functions are essentially quasi-judicial.”).

Prosecutorial Discretion: Administrative Closure & Dismissal

- ▣ Administrative Closure vs. Dismissal
 - Administrative closure - case and applications for relief are still technically pending before EOIR, but case is removed from the docket until a motion to re-calendar, if any, is filed by either party
 - Dismissal - removal proceedings and any applications for relief are dismissed and no longer considered pending before EOIR
 - ▣ Motions to dismiss as a matter of PD should either be submitted as an unopposed motion filed by DHS or a joint motion. *See E-R-M & L-R-M*, 25 I&N Dec. at 521-25 (holding that the Immigration Judge did not have the authority to dismiss proceedings as improvidently begun against the respondent who was subject to reinstatement); *see also Matter of Yazdani*, 17 I&N Dec. 626, 630 (BIA 1981) (noting that neither the Board nor an Immigration Judge has the authority to dismiss proceedings as a matter of discretion where the government opposes dismissal).

Detained vs. Non-Detained: DHS Perspective

DETAINED

- ☐ NTA generally filed within a few days of being issued.
- ☐ Pending I-130
 - *Hashmi-ish* Hearing
- ☐ Obvious Grants
 - Conserve everyone's resources with quick setting
- ☐ U.S. Citizenship Issues
 - Let us know the second you know

NON-DETAINED

- ☐ Time after the NTA is issued and filed with the court varies. P
- ☐ Pending I-130
 - Admin Close for CIS to adjudicate
- ☐ Obvious Grants
 - Conserve everyone's resources with quick setting
- ☐ U.S. Citizenship Issues
 - Get your evidence together and N600 filed

Merits Preparation: Before the Hearing (DHS Perspective)

- ☐ Do Not Put Off PD Requests Until the Last Minute
- ☐ Determine Whether it is a Case DHS May Not Oppose
 - But, of course, know your Immigration Judge.
- ☐ Find Issues, Evidence, Testimony, etc. to which DHS May Stipulate

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

Subject ID: ~~XXXXXX~~

FINS: ~~XXXXXX~~

File No: AD 23 456 784

DOB: 1/1/1986

Event No: XXXXXX

In the Matter of:

Respondent: John Doe

currently residing at:

Rolling Plains Detention Center, 118 County Rd 206, Haskell, TEXAS, 79521

(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:

1. You are not a citizen or national of the United States;
2. You are a native of MEXICO and a citizen of MEXICO;
3. Your status was adjusted to that of a lawful permanent resident on April 1, 1999 under section 245 of the Act;
4. You were, on April 13, 2005, convicted in the 7th Judicial District Court Smith County, Texas for the offense of Possession of a Controlled Substance PG 1 >= 4g < 200g, to wit: methamphetamine, in violation of H.S.C 481.115(d).

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:

See Continuation Page Made a Part Hereof

- 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: 1100 Commerce Street, Room 1060 Dallas TX 75242. EOIR Dallas, TX

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

on To be set. at To be set. to show why you should not be removed from the United States based on the charge(s) set forth above.

Date: 1/1/14

(Signature and Title of Issuing Officer)
Dallas, TX

(City and State)

See reverse for important information

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 Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on 1/2/14, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

- in person (checked)
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. (checked)

The alien was provided oral notice in the English language of the time and place of his 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)

Alien's Name <i>John Doe</i>	File Number <i>A1523456789</i> Event No: <i>X14</i>	Date <i>11/11/14</i>
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ON THE BASIS OF THE FOREGOING, IT IS CHARGED THAT YOU ARE SUBJECT YOU REMOVAL FROM THE UNITED STATES PURSUANT TO THE FOLLOWING PROVISION(S) OF LAW:

Section 237(a)(2)(B)(i) of the Immigration and Nationality Act, as amended, in that, at any time after admission, you have been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802), other than a single offense involving possession for one's own use of 30 grams or less of marijuana.

Signature	Title SUPERVISORY DEPORTATION OFFICER
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In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID : ~~XXXX~~
SIGMA Event: ~~XXXX~~

FIN #: ~~XXXXXX~~
DOB: 12-2-60

File No: ~~XXXX~~ 799123
Event No: ~~XXXXXX~~

In the Matter of:

Respondent: David Freeze

currently residing at:

ROLLING PLAINS REGIONAL JAIL 118 COUNTY ROAD 206 , HASKELL TEXAS 79521

(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:

- 1. You are not a citizen or national of the United States;
- 2. You are a native of Kokomo and a citizen of Kokomo
- 3. On October 6, 2011 you adjusted status to that of a lawful permanent resident alien;
- 4. On or about March 15, 2012 you were convicted in the 371st District Court of Fort Worth, Texas for the offense of one count of AGGRAVATED ASSAULT WITH DEADLY WEAPON;
- 5. On February, 2014 you arrived at Dallas/Fort Worth International Airport, Dallas, Texas and applied for admission to the United States as a lawful permanent resident.

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:

See Continuation Page Made a Part Hereof

- 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:
1100 Commerce Street, Room 1060 Dallas TEXAS US 75242

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

on a date to be set at a time to be set to show why you should not be removed from the United States based on the

(Date)

(Time)

charge(s) set forth above.

CBP Officer

(Signature and Title of Issuing Officer)

Date: 2/12/2014

DFW IAP

(City and State)

See reverse for important information

Alien's Name <i>David Freeze</i>	File Number A <i>456 789 123</i> SIGMA Event: <i>PLT</i> Event No: <i>X-X</i>	Date <i>2/2/2014</i>
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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:

Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act, as amended, in that you are an alien who has been convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime.

Signature	Title CBP Officer
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In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: XXX FX

FINS: XXXXXX

DOB: 12/12/1990

File No: A987654321

Event No: XXXXX

In the Matter of:

Respondent:

Jane Doe

555 Gividen St., Very West, TX

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:

1. You are not a citizen or national of the United States;
2. You are a native of MEXICO and a citizen of MEXICO;
3. You arrived in the United States at or near LAREDO, TEXAS, on or about July 18, 2002;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

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:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- 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: 1100 Commerce Street, Room 1060 Dallas TX 75242. EOIR Dallas, TX

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

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

charge(s) set forth above.

Date: 12/12/2011

DALLAS, TEXAS

[Handwritten Signature]

(Signature and Title of Issuing Officer)

See reverse for important information