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# Alien Removals and Returns: Overview and Trends

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## Summary

The ability to remove foreign nationals (aliens) who violate U.S. immigration law is central to the immigration enforcement system. Some lawful migrants violate the terms of their admittance, and some aliens enter the United States illegally, despite U.S. immigration laws and enforcement. In 2012, there were an estimated 11.4 million resident unauthorized aliens; estimates of other removable aliens, such as lawful permanent residents who commit crimes, are elusive. With total repatriations of over 600,000 people in FY2013—including about 440,000 formal removals—the removal and return of such aliens have become important policy issues for Congress, and key issues in recent debates about immigration reform.

The Immigration and Nationality Act (INA) provides broad authority to the Department of Homeland Security (DHS) and the Department of Justice (DOJ) to remove certain foreign nationals from the United States, including unauthorized aliens (i.e., foreign nationals who enter without inspection, aliens who enter with fraudulent documents, and aliens who enter legally but overstay the terms of their temporary visas) and lawfully present foreign nationals who commit certain acts that make them removable. Any foreign national found to be inadmissible or deportable under the grounds specified in the INA may be ordered removed. The INA describes procedures for making and reviewing such a determination, and specifies conditions under which certain grounds of removal may be waived. DHS officials may exercise certain forms of discretion in pursuing removal orders, and certain removable aliens may be eligible for permanent or temporary relief from removal. Certain grounds for removal (e.g., criminal grounds, terrorist grounds) render foreign nationals ineligible for most forms of relief and may make them eligible for more streamlined (expedited) removal processes.

The “standard” removal process is a civil judicial proceeding in which an immigration judge from DOJ’s Executive Office for Immigration Review (EOIR) determines whether an alien is removable. Immigration judges may grant certain forms of relief during the removal process (e.g., asylum, cancellation of removal), and the judge’s removal decisions are subject to administrative and judicial review. The INA also describes different types of streamlined removal procedures, which generally include more-limited opportunities for relief and grounds for review. In addition, two alternative forms of removal exempt aliens from certain penalties associated with formal removal: voluntary departure (return) and withdrawal of petition for admission. These are often called “returns.”

Following an order of removal, an alien is inadmissible for a minimum of five years after the date of the removal, and therefore is generally ineligible to return to the United States during this time period. The period of inadmissibility is determined by the reason for and type of removal. For example, a foreign national ordered removed based on removal proceedings initiated upon the foreign national’s arrival is inadmissible for five years, while a foreign national ordered removed after being apprehended within the United States is inadmissible for 10 years. The length of inadmissibility increases to 20 years for an alien’s second or subsequent removal order, and is indefinite for a foreign national convicted of an aggravated felony.

Absent additional factors, unlawful presence in the United States is a civil violation, not a criminal offense, and removal and its associated administrative processes are civil proceedings. As such, aliens in removal proceedings generally have no right to counsel (though they may be represented by counsel at their own expense). In addition, because removal is not considered punishment by the courts, Congress may impose immigration consequences retroactively.

There were a record number of removals between FY2009 and FY2013, including 438,421 removals in FY2013. Approximately 71% of the foreign nationals removed were from Mexico. However, during the same time period the number of returns (most of which occur at the Southwest border) decreased to a low of 178,371 in FY2013—the fewest returns since 1968.

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## Introduction

Regardless of how a country regulates its immigration, some lawfully admitted foreign nationals may violate the conditions proscribed for being in the country, and some foreign nationals may enter the country illegally. Thus, in the United States, as in other countries, the removal of unauthorized aliens<sup>1</sup> and other aliens who violate the conditions under which they were admitted (e.g., overstaying their authorized period of stay, committing a crime while in the country) is central to immigration enforcement.

The removal and return of aliens to their country of nationality have become important policy issues for Congress, and tend to be key issues in debates about immigration reform. In 2012, there were an estimated 11.4 million resident unauthorized aliens in the United States;<sup>2</sup> estimates of other removable aliens, such as lawful permanent residents (LPRs)<sup>3</sup> who commit crimes, are elusive. More than 600,000 foreign nationals were repatriated from the United States in FY2013—including about 440,000 formal removals.<sup>4</sup>

The Immigration and Nationality Act (INA)<sup>5</sup> provides broad authority to the Department of Homeland Security (DHS) and the Department of Justice (DOJ) to remove certain aliens from the United States,<sup>6</sup> including unauthorized aliens and lawfully present foreign nationals who commit certain crimes. The different removal processes are spelled out in several sections of the INA,<sup>7</sup> which identifies two overarching reasons aliens may be removed from the United States: on the basis of *inadmissibility* or on the basis of *deportability* (see “Reasons for the Removal of a Foreign National”). The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA, P.L. 104-208), established new mechanisms by which to effectuate the removal of aliens who have violated the nation’s immigration laws—including several streamlined processes. An alien’s immigration status and whether the alien has engaged in certain specified activities (e.g., committed a particular criminal offense) determines which process is used. Lawful permanent

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<sup>1</sup> An alien is anyone who is not a citizen or national of the United States. It is synonymous with noncitizen and foreign national. Unauthorized aliens are aliens who enter the country without inspection, aliens who enter with fraudulent documents, and aliens who enter legally but overstay the terms of their temporary visas.

<sup>2</sup> Bryan Baker and Nancy Rytina, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012*, Department of Homeland Security, Office of Immigration Statistics, March 2013.

<sup>3</sup> A lawful permanent resident (LPR) is a foreign national who is admitted into the United States to live lawfully and permanently in the country. LPR is synonymous with immigrant.

<sup>4</sup> A formal removal is one where the alien undergoes one of the removal procedures outlined in statute (e.g., expedited removal, removal hearings before an immigration judge). Generally, foreign nationals who undergo a formal removal process are barred from reentering the United States for a certain amount of time. Other removable aliens may depart from the United States under the statutory authority of Voluntary Departure (return) or be allowed to withdraw their applications for admittance. These are often referred to as “returns” rather than removals.

<sup>5</sup> 8 U.S.C. 1101 *et seq.*

<sup>6</sup> Between 1940 and 2003, the primary authority to interpret, implement, and enforce the INA was vested with the Attorney General. With the implementation of the Homeland Security Act (P.L. 107-296) in 2003, the DHS Secretary became responsible for the administration and enforcement of most provisions of the INA, but the Attorney General retained responsibility for the adjudication of immigration removal cases through the Executive Office for Immigration Review (EOIR). Thus, removal is an area where the Attorney General and Secretary of Homeland Security both appear to have significant authority. For example, the Secretary of Homeland Security, generally through Immigration and Customs Enforcement (ICE) and Customs and Border Patrol (CBP), has authority over several types of expedited removal procedures, and decides which aliens the government will attempt to remove. The Attorney General, through EOIR, has ultimate authority over the immigration courts that preside over removal cases.

<sup>7</sup> INA §§235, 238, 240.

residents are generally subject to the standard removal process where foreign nationals have their cases decided by an immigration judge. However, arriving aliens who have not been admitted into the country, as well as aliens within the United States who have committed specified criminal offenses, may be subject to more streamlined removal processes such as reinstatement of removal or expedited removal of criminal aliens.

This report provides an overview of the statutory framework for removal and briefly describes the standard removal process. It also describes several streamlined forms of removal, and two alternative forms of removal (often referred to as returns) that exempt aliens from certain penalties associated with formal removal: voluntary departure and withdrawal of petition for admission. In addition, the report discusses recent trends in removals and returns, and concludes with a summary of potential avenues for relief from removal.

This report does not provide any legal analysis on these topics and does not discuss court cases related to removal. It also does not discuss how removable foreign nationals are identified and located (e.g., the Criminal Alien Program), or how the government chooses which removable aliens to initiate removal proceedings against (i.e., prosecutorial discretion).

## Reasons for the Removal of a Foreign National

The INA identifies two overarching reasons aliens may be removed from the United States: on the basis of *inadmissibility* or on the basis of *deportability*. Prior to the implementation of the IIRIRA, the INA included separate provisions governing the “exclusion” of aliens who were ineligible to enter the country (i.e., “excludable” persons) and the “deportation” of certain aliens within the United States (i.e., “deportable” persons).<sup>8</sup> The IIRIRA created a single proceeding to cover both types of removable aliens. Nonetheless, the INA retains two separate grounds for removal: (1) for aliens who have not been admitted to the United States and are inadmissible under INA §212,<sup>9</sup> and (2) for aliens who have been admitted to the United States (i.e., entered legally) and are deportable under INA §237(a).<sup>10</sup> Taken together the grounds of inadmissibility and deportability form the grounds for removal (i.e., the statutory reason that an alien may be removed from the United States). The grounds of inadmissibility and deportability are similar but not identical, as outlined below. Whether foreign nationals facing removal are subject to the grounds of inadmissibility or the grounds of deportability depends upon their immigration statuses.<sup>11</sup>

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<sup>8</sup> In addition to renaming the grounds for excludability as grounds for inadmissibility, IIRIRA also reclassified unauthorized aliens who enter the United States without inspection as inadmissible (i.e., rather than deportable, as had been the case prior to IIRIRA).

<sup>9</sup> Inadmissible aliens have not been admitted to the United States and are ineligible to be admitted legally. An alien may be present in the United States but not admitted. For example, if an alien entered the United States without being inspected by an immigration officer, the alien would be physically present in the United States, but would not have been admitted. (Such an alien would be considered illegally present.) The INA also creates a distinction between “arriving aliens” and others, but does not define the term. Under regulations, an arriving alien is one who seeks admission or to transit through the United States, or who is interdicted and brought to the United States (8 C.F.R. 1.1(q)). Arriving aliens are ineligible for certain types of relief from removal.

<sup>10</sup> Deportable aliens have been inspected and admitted to the United States, but subsequently have become ineligible to remain and are subject to removal.

<sup>11</sup> Washington State Supreme Court, Gender and Justice Commission and Minority and Justice Commission, *Immigration Resource Guide for Judges*, July 2013.

Any alien found to be inadmissible under INA §212 or deportable under INA §237 may be ordered removed. The INA describes procedures for making and reviewing such a determination, and specifies conditions under which some of these provisions may be waived.<sup>12</sup> DHS officials may exercise certain forms of discretion in pursuing removal orders,<sup>13</sup> and certain removable aliens may be eligible for permanent or temporary relief from removal.<sup>14</sup> Nonetheless, some grounds for removal<sup>15</sup> (e.g., criminal grounds, terrorist grounds) render aliens ineligible for most forms of relief and may make the alien eligible for a streamlined removal process (see “Streamlined Removal Processes”).

## Grounds of Inadmissibility

Section 212(a) of the INA specifies broad classes of inadmissible aliens,<sup>16</sup> including those who

- have a “communicable disease of public health significance,”<sup>17</sup>
- have committed certain criminal offenses,<sup>18</sup>
- are terrorists or national security concerns,<sup>19</sup>
- are likely at any time to become a public charge (i.e., become indigent),<sup>20</sup>
- are seeking to work without proper labor certification,<sup>21</sup>
- are attempting to enter illegally or have previously violated immigration law,<sup>22</sup>
- are ineligible for citizenship,<sup>23</sup> or

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<sup>12</sup> For more information on waivers for the grounds of inadmissibility, see CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem.

<sup>13</sup> Since its enactment in 1952, the INA has given the Attorney General and more recently the Secretary of Homeland Security prosecutorial discretion to exercise the power to remove foreign nationals. For more on the history of prosecutorial discretion, see U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Does Administrative Amnesty Harm our Efforts to Gain and Maintain Operational Control of the Border?*, Testimony of Ruth Ellen Wasem, Specialist in Immigration, Congressional Research Service, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., October 4, 2011.

<sup>14</sup> See “Relief from Removal” in this report.

<sup>15</sup> Grounds of removal mean both the grounds of inadmissibility and deportability.

<sup>16</sup> For further discussion of the grounds of inadmissibility, see CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem.

<sup>17</sup> INA §212(a)(1). The INA does not define “communicable disease of public health significance,” tasking the Secretary of Health and Human Services (HHS) to do so by regulation. For further discussion, see CRS Report R40570, *Immigration Policies and Issues on Health-Related Grounds for Exclusion*, by Ruth Ellen Wasem.

<sup>18</sup> INA §212(a)(2). For further discussion, see CRS Report RL32480, *Immigration Consequences of Criminal Activity*, by Michael John Garcia.

<sup>19</sup> INA §212(a)(3). For further discussion, see CRS Report RL32564, *Immigration: Terrorist Grounds for Exclusion and Removal of Aliens*, by Michael John Garcia and Ruth Ellen Wasem.

<sup>20</sup> INA §212(a)(4).

<sup>21</sup> INA §212(a)(5). For further discussion, see CRS Report RL33977, *Immigration of Foreign Workers: Labor Market Tests and Protections*, by Ruth Ellen Wasem.

<sup>22</sup> INA §212(a)(6)-(7).

<sup>23</sup> INA §212(a)(8). Although the ground “ineligible for citizenship” suggests a range of criteria linked to the naturalization provisions in Title III of the INA, its actual effect is to bar the entry of individuals who deserted their military service or evaded the military draft. For further discussion, see CRS Report R41104, *Immigration Visa* (continued...)

- have been removed previously or were unlawfully present in the United States.<sup>24</sup>

Generally, the grounds of inadmissibility are applied to foreign nationals found in the country who have not been admitted (e.g., those who entered illegally/without inspection). In addition, certain streamlined removal processes (such as expedited removal) can only be applied to aliens who have not been admitted to the United States.

## Grounds of Deportability

In order for a lawfully admitted alien to be ordered removed, the government has to prove that the noncitizen has violated a ground of deportation (e.g., overstaying his or her term of admittance).<sup>25</sup> The INA §237(a) specifies six broad classes of deportable aliens, including those who

- are inadmissible at time of entry or violate their immigration status;<sup>26</sup>
- commit certain criminal offenses,<sup>27</sup> including crimes of moral turpitude,<sup>28</sup> aggravated felonies,<sup>29</sup> alien smuggling, and high-speed flight from an immigration checkpoint;
- fail to register (if required under law) or commit document fraud;<sup>30</sup>
- are security risks (including aliens who violate any law relating to espionage, engage in criminal activity that endangers public safety, partake in terrorist activities, or assisted in Nazi persecution or genocide);<sup>31</sup>
- become a public charge within five years of entry;<sup>32</sup> or

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(...continued)

*Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem, p. 16. See also CRS Report R42924, *Prosecutorial Discretion in Immigration Enforcement: Legal Issues*, by Kate M. Manuel and Todd Garvey.

<sup>24</sup> INA §212(a)(9). The reason for and type of removal determine the period of inadmissibility; see, “Consequences of an Order of Removal” in this report.

<sup>25</sup> INA §240(c)(3)(A).

<sup>26</sup> INA §237(a)(1). In other words, any alien who was admitted, but was inadmissible at the time of entry, is removable. Violations of immigration status include remaining in the United States past the authorized period of admission (i.e., overstaying a visa), and working in the United States under a visa category that does not permit employment.

<sup>27</sup> INA §237(a)(2). For further discussion, see CRS Report RL32480, *Immigration Consequences of Criminal Activity*, by Michael John Garcia.

<sup>28</sup> Moral turpitude is not defined under immigration law, and has been determined by case law. In general, if a crime manifests an element of baseness, vileness, or depravity under current mores—if it evidences an evil or predatory intent—it involves moral turpitude. For example, crimes such as murder, rape, blackmail, tax evasion, and fraud have been considered to involve moral turpitude, whereas crimes such as simple assault, possessing stolen property, and forgery have not. The flexibility in the term is to allow for changing social norms. For further discussion, see *ibid*. For a list of crimes that are considered to involve moral turpitude for the purpose of having a visa issued, see Department of State, *Foreign Affairs Manual*, vol. 9, §40.21(a).

<sup>29</sup> The definition of aggravated felony, in INA §101(a)(43), includes over 50 types of crimes. An alien convicted of an aggravated felony is conclusively presumed to be deportable (INA §238(c)). Misdemeanors at the state level may be aggravated felonies under the INA. For further discussion, see CRS Report RL32480, *Immigration Consequences of Criminal Activity*, by Michael John Garcia.

<sup>30</sup> INA §237(a)(3).

<sup>31</sup> INA §237(a)(4).

<sup>32</sup> INA §237(a)(5).

- vote unlawfully.<sup>33</sup>

## Consequences of an Order of Removal

INA §241 describes the general consequences of an order of removal, including what must occur after one has been issued. Aliens under a final order of removal normally are required to depart the United States within 90 days and may be detained until the removal order is executed. Usually, the Secretary of DHS must remove an alien within 90 days of the alien receiving a final order of removal (also see “Removal Process”). Under most circumstances, INA §241 requires that aliens under a final order of removal be detained until the removal order is executed (i.e., until the alien is removed from the country).<sup>34</sup> In addition, aliens who are not detained and cannot be removed within 90 days face other supervision requirements.<sup>35</sup>

Following an order of removal, an alien is inadmissible to the United States for a minimum of five years after the date of the removal, and therefore is generally ineligible during the period of inadmissibility to return to the United States in the absence of an applicable exception. The period of inadmissibility is determined by the reason for the removal and the type of removal process used. For example, an alien who is ordered removed based on removal proceedings initiated upon the alien’s arrival is inadmissible for five years, while an alien ordered removed after being apprehended within the United States is inadmissible for 10 years.<sup>36</sup> The length of inadmissibility increases to 20 years in the case of an alien’s second or subsequent removal order, and is indefinite in the case of an alien convicted of an aggravated felony.<sup>37</sup>

## Removal Processes

Absent additional factors, unlawful presence in the United States is a civil violation, not a criminal offense,<sup>38</sup> and removal and its associated administrative processes are civil

<sup>33</sup> INA §237(a)(6).

<sup>34</sup> Pursuant to INA §241(a)(2), aliens order removed on the basis of criminal offenses, terrorism, or security concerns always must be detained until the removal order is executed.

<sup>35</sup> Most of these requirements are prescribed in regulations, but under law the alien must be required to: (1) appear periodically before an immigration officer; (2) submit, if necessary, to a medical and psychiatric examination; (3) provide information under oath that the Secretary of DHS deems appropriate; and (4) obey reasonable written restrictions on conduct and activities as prescribed by the Secretary. (INA §241(a)(3); 8 C.F.R. §241.5) In addition, INA §241(a)(6) permits the continued detention past the removal period of inadmissible aliens, aliens ordered removed under criminal or terrorist grounds, or aliens who are determined to be a risk to the community or unlikely to comply with the removal order.

<sup>36</sup> INA §212(a)(9)(C).

<sup>37</sup> INA §212(a)(9). Pursuant to INA §212(a)(9)(B), an alien who is *not* ordered removed and who departs the country after being unlawfully present for at least six months is inadmissible for three years; and an alien unlawfully present for at least one year is inadmissible for 10 years. Both of these grounds for inadmissibility may be waived under certain circumstances. For further discussion, see CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem.

<sup>38</sup> Unlawful presence is only a criminal offense when an alien is found in the United States after having been formally removed or after departing the United States while a removal order was outstanding; see CRS Report RL32480, *Immigration Consequences of Criminal Activity*, by Michael John Garcia. The INA also includes certain criminal violations that may be prosecuted in federal district courts. These violations, which are beyond the scope of this report, include the bringing in and harboring of certain undocumented aliens (INA §274), the illegal entry of aliens (INA (continued...))

proceedings.<sup>39</sup> Thus, aliens in removal proceedings generally have no right to appointed counsel (though they may be represented by counsel at their own expense).<sup>40</sup> In addition, Congress may pass legislation that imposes immigration consequences retroactively.<sup>41</sup>

Certain DHS personnel may initiate a removal process against an alien by presenting the alien with a notice to appear (NTA).<sup>42</sup> The NTA outlines the INA provisions that the alien is charged with violating (i.e., one of the grounds of inadmissibility or deportability discussed in “Reasons for the Removal of a Foreign National”).

Upon the receipt of an NTA, foreign nationals may be detained during removal proceedings, and certain foreign nationals are subject to mandatory detention.<sup>43</sup> Foreign nationals who are not subject to mandatory detention may be released on bond or their own recognizance. An alien who is eligible to be released on bond may request a bond redetermination hearing before an immigration judge to have the bond lowered, or to be given bond if it was denied by DHS. During the bond hearing, the alien must prove that he or she is not a flight risk or a danger to society.<sup>44</sup> Bond hearings are not considered part of the removal process.

The standard removal process under INA §240 is a trial-like proceeding in which an attorney from DHS presents the government’s case for why the alien should be removed and an immigration judge from the Department of Justice’s Executive Office for Immigration Review (EOIR) determines whether the alien should be removed. The standard removal process is only one of several ways aliens may be removed from the United States. An alien may concede removability (i.e., accept stipulated removal) rather than undergoing the standard removal proceeding. In addition, an alien may be subject to one of several types of streamlined removal procedures, which generally include more-limited opportunities for relief and review than the standard removal process (see “Streamlined Removal Processes”).<sup>45</sup>

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(...continued)

§275), and the reentry of aliens previously excluded or deported (INA §276), among others.

<sup>39</sup> INA §237(a)(1)(B).

<sup>40</sup> INA §240(b)(4)(A).

<sup>41</sup> For example, an action that does not make an alien removable at the time it occurs may make the alien deportable at a later date if Congress changes the law. See Charles Gordon, Stanley Mailman, Stephen Yale-Loehr, *Immigration Law and Procedure*. Newark: LexisNexis, vol. 6.

<sup>42</sup> DHS personnel authorized to issue a NTA include U.S. Customs and Border Protection (CBP) officers and U.S. Border Patrol agents (within CBP), asylum and examination officers in U.S. Citizenship and Immigration Services (USCIS), and detention officers and other agents in U.S. Immigration and Customs Enforcement (ICE); see 8 C.F.R. §239.1(a).

<sup>43</sup> Under INA §236, any alien may be detained while awaiting a determination of removability. In addition, criminal aliens; national security risks; arriving aliens subject to expedited removal; and arriving aliens who appear inadmissible for other than document-related reasons must be detained while awaiting a determination of removability. For more information on detention, see CRS Report RL32369, *Immigration-Related Detention*, by Alison Siskin.

<sup>44</sup> In FY2012, of those released on bond or on their own recognizance, or who were never detained, 21% failed to appear for their removal hearings. U.S. Department of Justice, Executive Office for Immigration Review, *FY2012 Statistical Year Book*, Falls Church, VA, February 2013.

<sup>45</sup> Aliens removable as “alien terrorists” may also be removed through a special removal court proceeding (INA Title V) though no such court has ever convened as of the date of this report.

## Standard Removal Process (INA §240)

The standard removal process is a civil administrative proceeding in which an EOIR immigration judge determines whether an alien is removable. Immigration judges may grant certain forms of relief (see “Relief from Removal”) during the removal proceeding, and their removal decisions are subject to certain forms of review.

Apart from a possible bond hearing related to detention, generally an alien first appears in immigration court at a preliminary hearing. An alien who fails to appear for a removal hearing (absent exceptional circumstances) can be removed *in absentia* and becomes inadmissible for five years,<sup>46</sup> as well as ineligible for relief from removal for 10 years.<sup>47</sup> Some cases—such as *in absentia* cases, cases where the respondent concedes removability, and cases where both the government and the alien agree to the relief—can be decided at the preliminary hearing stage. Otherwise, a time may be set for an individual merits hearing.

During the individual merits hearing, the government’s attorney attempts to prove the charges on the NTA. The government and the alien can present witnesses, and the judge rules on whether the foreign national is removable from the United States and is eligible for relief from removal if requested by the foreign national.<sup>48</sup> Generally, within 30 days after the decision, the government’s attorney or the foreign national may appeal the decision to the Board of Immigration Appeals (BIA).<sup>49</sup> After the BIA decision, the alien may appeal to a federal court.<sup>50</sup>

## Stipulated Removal (INA §240(d))

INA §240(d) allows for an immigration judge to enter a removal order for an alien who concedes removability without the alien undergoing a standard removal proceeding in front of an immigration judge. The foreign national must fill out a detailed form, which must be approved by DHS. Generally, only those who have no possibility of relief from removal accept stipulated removal. A stipulated removal order generally has the same repercussions as a removal order issued at the end of an immigration proceeding in terms of triggering the grounds of inadmissibility.

<sup>46</sup> INA §212(a)(6)(B), 8 U.S.C. §1182(a)(6)(B).

<sup>47</sup> INA §240(b)(7). Types of relief from removal include asylum, cancellation of removal, withhold of removal, adjustment to LPR status, or change to a nonimmigrant classification. (See “Relief from Removal.”) Such an alien is also ineligible for most types of relief from removal for 10 years. (INA, §240(b)(7), 8 U.S.C. §1229a(b)(7)).

<sup>48</sup> If an alien in removal proceedings is eligible to adjust status immediately (i.e., the alien is eligible to adjust status because of a family or employment relationship and a visa number is available) the immigration judge has discretion to continue the removal proceeding until the visa petition is decided. According to policy, Immigration and Customs Enforcement is directed to transfer the A-files (the immigration files) of aliens in removal proceedings who have pending LPR petitions to U.S. Citizenship and Immigration Services (USCIS). USCIS tries to adjudicate an alien’s petition within 45 days (or 30 days if the alien is detained). John Morton, Assistant Secretary, *Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions*, Immigration and Customs Enforcement, Policy Memorandum, Washington, DC, August 20, 2010.

<sup>49</sup> In regards to removal, the BIA, located in Falls Church, Virginia, has nationwide jurisdiction to hear appeals from certain decisions rendered by immigration judges. The BIA decides most appeals by conducting a “paper review” of cases. BIA decisions are binding on immigration judges unless modified or overturned by the Attorney General or a federal court. Department of Justice, *Board of Immigration Appeals*, Washington, DC, November 2011, <http://www.justice.gov/eoir/biainfo.htm>.

<sup>50</sup> For a detailed discussion of judicial review of removal orders, see archived CRS Report 97-788, *Immigration: Judicial Review of Removal Orders*, by Larry M. Eig, archived and available from the author.

## Streamlined Removal Processes

In 1996, Congress amended the INA to establish several streamlined removal procedures through which an alien could be removed with limited or no review by the immigration courts.<sup>51</sup> These removal procedures tend to limit the types of relief available (see “Relief from Removal”) and judicial review, compared to hearings under the standard removal process. In recent years, these streamlined removal processes have accounted for a higher percentage of total removals than standard removals, and are responsible for most of the growth in the overall number of removals (see **Figure 3**).

### Expedited Removal of Arriving Aliens (INA §235(b))<sup>52</sup>

Under expedited removal (INA §235(b)), an alien who lacks proper documentation or has committed fraud or willful misrepresentation of facts to gain admission into the United States is inadmissible and may be removed without any further hearings or review,<sup>53</sup> unless the alien indicates an intention to apply for asylum or another form of removal based on a fear of persecution.<sup>54</sup> Aliens from Western Hemisphere countries with which the United States does not have full diplomatic relations (e.g., Cuba) are excluded from expedited removal.<sup>55</sup> In addition, under policy, unaccompanied minors<sup>56</sup> are placed in expedited removal in very limited circumstances.<sup>57</sup>

Aliens subject to expedited removal must be detained until they are removed and may only be released due to a medical emergency or, if necessary, for law enforcement purposes.<sup>58</sup> Although under law the Secretary of Homeland Security<sup>59</sup> may apply expedited removal to any alien who

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<sup>51</sup> See the Antiterrorism and Effective Death Penalty Act of 1996 (P.L. 104-132, §442) and Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208, Division C, Title III, Subtitle A).

<sup>52</sup> For a detailed discussion of expedited removal, see archived CRS Report RL33109, *Immigration Policy on Expedited Removal of Aliens*, by Alison Siskin and Ruth Ellen Wasem.

<sup>53</sup> Under expedited removal, both administrative and judicial review are limited generally to cases in which the alien claims to be a U.S. citizen or to have been previously admitted as a legal permanent resident, refugee, or asylee.

<sup>54</sup> See CRS Report RL32621, *U.S. Immigration Policy on Asylum Seekers*, by Ruth Ellen Wasem.

<sup>55</sup> In addition, expedited removal does not apply to noncitizens entering with a passport from a Visa Waiver Program country (8 C.F.R. §§235.3(b)(5) 1235.3(b)(5)). For more on the Visa Waiver Program, see CRS Report RL32221, *Visa Waiver Program*, by Alison Siskin.

<sup>56</sup> Unaccompanied alien children are defined in statute as children who lack lawful immigration status in the United States, are under the age of 18, and are without a parent or legal guardian in the United States or for whom no parent or legal guardian in the United States is available to provide care and physical custody. 6 U.S.C. §279(g)(2). For more on the issue of unaccompanied alien children, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*, by Lisa Seghetti, Alison Siskin, and Ruth Ellen Wasem; and CRS Report R43623, *Unaccompanied Alien Children—Legal Issues: Answers to Frequently Asked Questions*, by Kate M. Manuel and Michael John Garcia.

<sup>57</sup> Paul Virtue, *Unaccompanied Minors Subject to Expedited Removal*, Immigration and Naturalization Service, Policy Memorandum, Washington, DC, August 21, 1997. Although the policy was implemented in 1997, it appears that it is still current.

<sup>58</sup> There are special expedited removal procedures for aliens who appear inadmissible on security and related grounds (INA §235(c), 8 U.S.C. §1225(c)).

<sup>59</sup> Although the INA references the Attorney General, due to the Homeland Security Act of 2002 (P.L. 107-296), expedited removal policy is being administered by the Secretary of Homeland Security.

has not been admitted or paroled<sup>60</sup> into the United States and who cannot show that he or she has been continuously present for two years, expedited removal has only been applied to aliens

- arriving at ports of entry;
- arriving by sea who are not admitted or paroled; and
- who are present in the United States without being admitted or paroled, are encountered by an immigration officer within 100 air miles of the U.S. international land border, and have not established to the satisfaction of an immigration officer that they have been physically present in the United States continuously for the 14-day period immediately preceding the date of encounter.

The INA provides immigration protections to aliens who have a well-founded fear of persecution, most notably in the form of asylum status. Aliens who are in expedited removal and request asylum are given a “credible fear” hearing to determine if there is support for their asylum claim.<sup>61</sup> Those who pass the credible fear hearing are placed into standard removal proceedings under INA §240. In addition, aliens who receive negative “credible fear” determinations may request that an immigration judge review the case. Aliens who have been subject to expedited removal are barred from reentering the United States for at least five years.<sup>62</sup>

### **Expedited Removal of Aliens Convicted of Aggravated Felonies (INA §238)**

Aliens who have been convicted of certain crimes are barred from most types of relief from removal,<sup>63</sup> and, partially as a result of this, the INA contains provisions to accelerate the removal of noncitizens who have been convicted of such crimes.<sup>64</sup> Generally, those who are removable because of a criminal act are subject to mandatory detention while awaiting removal.<sup>65</sup> Aliens removed on criminal grounds are generally subject to bars on reentering the United States ranging from 10 years to indefinite, depending on the nature of the offense committed and whether they had been removed previously.<sup>66</sup>

INA §238(a)(1) allows for removal proceedings for aliens convicted of certain crimes to be conducted at federal, state, and local correctional facilities. The goal of this provision is to be able to expeditiously remove the alien when the alien has completed his criminal sentence, and limit the amount of time that an alien must remain in DHS custody pending removal.<sup>67</sup>

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<sup>60</sup> *Parole* is a term in the INA which means that the alien has been granted temporary permission to enter and be present in the United States. Parole does not constitute formal admission to the United States and parolees are required to leave when the parole expires, or if eligible, to be admitted in a lawful status.

<sup>61</sup> The INA states that “the term credible fear of persecution means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum ... ” (INA §235(b)(1)(B)(v); 8 U.S.C. §1225). See CRS Report RL32621, *U.S. Immigration Policy on Asylum Seekers*, by Ruth Ellen Wasem.

<sup>62</sup> INA §212(a)(9)(A)(i), 8 U.S.C. §1182(a)(9)(A)(i).

<sup>63</sup> See CRS Report RL32480, *Immigration Consequences of Criminal Activity*, by Michael John Garcia.

<sup>64</sup> Under the INA aliens who are convicted of crimes must complete their criminal sentences before they can be removed from the United States. INA §241(a)(4)(A), 8 U.S.C. §1231(a)(4)(A).

<sup>65</sup> INA §236(c), 8 U.S.C. §1226(c). See CRS Report RL32369, *Immigration-Related Detention*, by Alison.

<sup>66</sup> INA §212(a)(9)(A)(ii), 8 U.S.C. §1182(a)(9)(A)(ii).

<sup>67</sup> This program was known as the Institutional Removal Program (IRP), and is now operated under ICE’s Criminal Alien Program as the Institutional Hearing Program (IHP).

In addition, INA §238(b) authorizes the government to determine that certain noncitizens are deportable without having the decision on removability made by an immigration judge.<sup>68</sup> To be eligible for removal under INA §238(b), an alien cannot be an LPR and must have been convicted of an aggravated felony.<sup>69</sup> Although the alien is not entitled to a hearing before an immigration judge, the alien is entitled to

- “reasonable” notice of the charges and an opportunity to inspect the evidence and rebut the charges;
- counsel, at no expense to the government;
- a determination that the foreign national is in fact the person named in the notice; and
- a record of the proceedings for judicial review.<sup>70</sup>

Because foreign nationals removed under this provision have been convicted of at least one aggravated felony, they are indefinitely barred from reentering the United States.<sup>71</sup>

### **Reinstatement of Removal (INA §241(a)(5))**

Another streamlined removal process is for the government to reinstate a previously issued removal order. A foreign national who is found to have reentered the United States illegally after being removed or leaving under voluntary departure (see “Voluntary Departure (INA §240B)”) can have their prior removal order reinstated by DHS. The reinstatement order is not subject to review by an immigration judge and the foreign national is ineligible for all types of relief from removal with the exception of withholding of removal<sup>72</sup> and a claim based on the Convention Against Torture (see “Temporary Types of Relief from Removal”).<sup>73</sup> A person who was ordered removed but reentered the country legally is not subject to reinstatement of removal.<sup>74</sup>

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<sup>68</sup> INA §238(b), 8 U.S.C. §1228(b).

<sup>69</sup> Aggravated felonies for immigration purposes include any crime of violence for which the term of imprisonment is at least one year, any crime of theft or burglary for which the term of imprisonment is at least one year, and illegal trafficking in drugs, firearms, or destructive devices. The definition also provides a list of many specific crimes. See CRS Report RL32480, *Immigration Consequences of Criminal Activity*, by Michael John Garcia.

<sup>70</sup> INA §238(b)(4), 8 U.S.C. §1228(b)(4).

<sup>71</sup> INA §212(a)(9)(A)(i), 8 U.S.C. §1182(a)(9)(A)(i).

<sup>72</sup> INA §241(a)(5) states that an alien who has had a removal order reinstated, “is not eligible and may not apply for any relief under that Act.” Under regulation such aliens are eligible for withholding of removal. 8 C.F.R. §§241.8(e), 1241.8(e). Withholding of Removal is relief that prevents removal to a country where the foreign national has a clear probability of suffering persecution based on race, religion, nationality, political opinion, or membership in a particular social group.

<sup>73</sup> INA §241(a)(5), 8 U.S.C. 1231(a)(5).

<sup>74</sup> Foreign nationals who are eligible to adjust status under the Nicaraguan Adjustment and Central American Relief Act (NACARA) or under the Haitian Refugee Immigration Fairness Act (HRIFA) are not subject to reinstatement. For more on NACARA and HRIFA, see archived CRS Report 98-270, *Immigration: Haitian Relief Issues and Legislation*, and archived CRS Report 97-810, *Central American Asylum Seekers: Impact of 1996 Immigration Law*, by Ruth Ellen Wasem. The reports are available from the author.

## **Alternative Forms of Removal (i.e., Returns)**

Until FY2013, the majority of aliens apprehended along the Southwest border were not subject to the standard removal procedures or expedited removal (see “Statistics on Removals and Returns”); instead, the majority of these aliens were allowed to either undergo voluntary departure or withdraw their applications. Voluntary departure and withdraw of application are often referred to as types of *returns* rather than removals. In addition, some aliens within the country accept voluntary departure either as an alternative to having a judge render a decision regarding their removability or at the conclusion of their removal proceeding.

### **Voluntary Departure (INA §240B)**

Some consider voluntary departure a type of relief from removal because it does not carry the same consequences (i.e., the same time bars for reentering the country or criminal consequences for those who reenter) as other types of removal. Nonetheless, unlike those who receive other types of relief from removal, aliens who are granted voluntary departure are not permitted to remain in the United States for an extended period of time.<sup>75</sup>

The INA authorizes voluntary departure at two distinct times—before the conclusion of removal proceedings and at the conclusion of removal proceedings—with different requirements and restrictions.<sup>76</sup> However, regulations implementing voluntary departure created three periods for seeking voluntary departure and established conditions for voluntary departure at each juncture. The periods are (1) before the initiation of removal proceedings, (2) after the initiation of removal proceedings but before the proceedings are concluded, and (3) at the conclusion of removal proceedings.<sup>77</sup> An alien must request voluntary departure in order to receive it.<sup>78</sup> Aliens who are removable because of a conviction for an aggravated felony or on terrorist grounds are ineligible for voluntary departure. Those who were granted voluntary departure but failed to depart within the specified time are ineligible for 10 years for voluntary departure and most types of relief from removal.<sup>79</sup>

At the border, voluntary departure is available only to aliens from contiguous territories (i.e., Canada and Mexico), and aliens are escorted to the point of departure.<sup>80</sup> DHS Customs and Border Patrol (CBP) inspectors can also permit aliens traveling through a point of entry (POE) to withdraw their applications for admission and return to their points of origin. Voluntary departure costs less than most types of removal procedures since, in most cases, the government does not have to pay for the foreign nationals’ return to their home countries.

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<sup>75</sup> The maximum time an alien who accepts voluntary departure could be allowed to remain in the United States is 120 days. 8 C.F.R. §240.25(c).

<sup>76</sup> INA §240B, 8 U.S.C. 1229c.

<sup>77</sup> 8 C.F.R. §§240.25, 1240.26.

<sup>78</sup> 8 C.F.R. §240.25(c).

<sup>79</sup> 8 C.F.R. §1240.26(a).

<sup>80</sup> Aliens under voluntary departure must admit that their entry was illegal and waive their right to an immigration hearing. Aliens under voluntary departure may apply for legal entry in the future.

## **Withdraw of Application (INA §235(a)(4))**

At the discretion of the government, an applicant for admission to the United States may be permitted to withdraw his or her application and depart immediately from the United States without being subject to the five-year bar on reentry.<sup>81</sup> An alien may be permitted to withdraw the application if it is determined that it is in the best interest of justice that a removal (or expedited removal) order not be issued, and that the alien has both the intent and means to depart immediately from the United States.<sup>82</sup> The alien's decision to withdraw the application must be made voluntarily. In general, an alien who has withdrawn an application for admission must be detained, either by DHS or the owner of the vessel (e.g., airline) on which he or she arrived, until departure.<sup>83</sup>

## **Statistics on Removals and Returns**

There are two sets of statistics regarding removals and returns of aliens from the United States. The first set is from DHS' Office of Immigration Statistics (OIS) and include removals and returns by both Immigration and Customs Enforcement (ICE) in the interior of the country and by CBP at the borders. Additionally, ICE produces its own statistics on removals that do not include CBP's statistics. CRS presents both sets of data because different information can be obtained from the manner in which each maintains and presents its data. For example, ICE is able to provide data on the grounds (i.e., main reason) for removal, which is not captured in data from OIS.

Overall, both sets of data present a similar picture of removals. The data show an increase in the total number of removals, driven mostly by an increase in the use of expedited removal processes and a decrease in the use of returns (i.e., voluntary departure and withdraw of application). The decrease in returns is most likely attributable to a policy change that places more aliens in removal processes rather than allowing them to withdraw their applications, and to a decrease in the total number of apprehensions along the Southwest border.<sup>84</sup>

## **Aliens Removed and Returned Since 1995**

In FY1995 the number of removals was significantly less than the number of returns, but since FY2011 the number of removals has outpaced the number of returns. In FY1995 there were just 50,924 removals compared to over 1.3 million returns. Between FY1996 and FY1998 the number of removals increased 151%, from 69,680 to 174,813, corresponding to changes made in IIRIRA<sup>85</sup> that expanded the grounds for removal and tightened the standards for relief from removal. In addition, the changes made to the grounds for removal (i.e., the statutory reasons a foreign national can be removed) were retroactive. For example, some aliens had committed

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<sup>81</sup> 8 C.F.R. §235.4 states, "nothing in this regulation shall be construed as to give an alien the right to withdraw his or her request for admission."

<sup>82</sup> 8 C.F.R. §235.4.

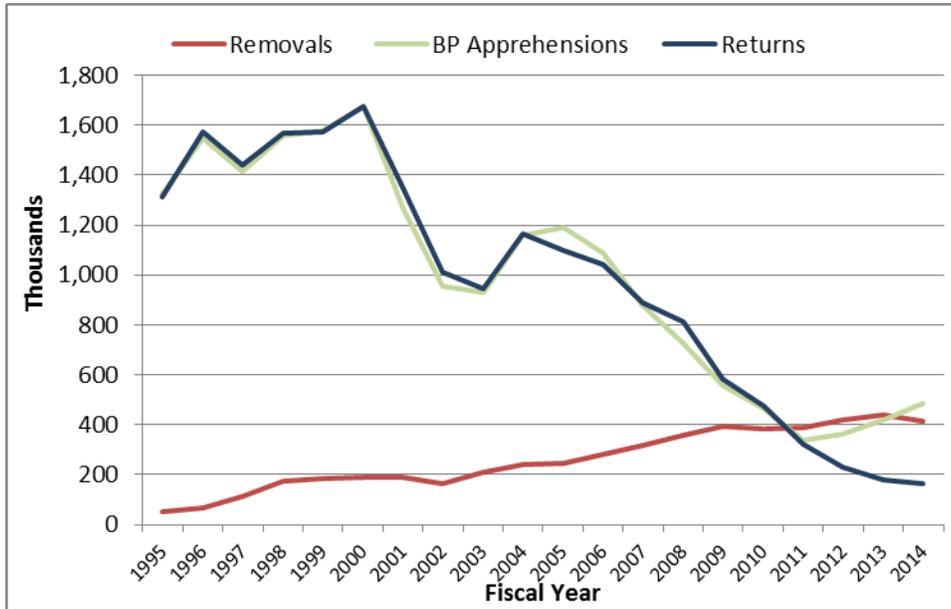
<sup>83</sup> Aliens who withdraw their applications may be paroled into the country if circumstances warrant. 8 C.F.R. §235.4.

<sup>84</sup> For a discussion of these trends, see CRS Report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*, by Lisa Seghetti.

<sup>85</sup> P.L. 104-208, Title IV.

crimes prior to 1996 that were not removable offenses at the time, but the changes made in 1996 made these aliens removable. Although the number of returns remained relatively constant between FY1996 and FY1998 (about 1.5 million a year), and the number of removals more than doubled during the same period, the number of returns remained significantly higher than the number of removals.

**Figure 1. Removals, Returns, and Border Patrol (BP) Apprehensions**  
FY1995-FY2014



**Source:** Department of Homeland Security, “DHS Released End of Year Statistics,” press release, December 19, 2014. Department of Homeland Security, Office of Immigration Statistics, *Yearbook of Immigration Statistics: 2013*, Washington, DC, Tables 35, 39; <http://www.dhs.gov/yearbook-immigration-statistics-2013-enforcement-actions>. Department of Justice, Immigration and Naturalization Service, *Yearbook of Immigration Statistics: 2001*, Washington, DC, February 2003, p. 233.

With the exception of one year (FY2002), the number of removals increased between FY1997 and FY2009. The number of removals remained relatively stable between FY2009 and FY2011, and then increased again between FY2011 and FY2013. The number of removals declined between FY2013 and FY2014. Some of the overall growth in removals since FY2002 may be related to enforcement efforts in response to the terrorist attacks of September 11, 2001.<sup>86</sup> In addition, funding for immigration enforcement increased during this period.<sup>87</sup> The highest number of removals occurred in FY2013 (438,421).

<sup>86</sup> Muzaffar Chishti and Claire Bergeron, *Post-9/11 Policies Dramatically Alter the U.S. Immigration Landscape*, Migration Policy Institute, Policy Beat, Washington, DC, September 8, 2011, <http://www.migrationpolicy.org/article/post-911-policies-dramatically-alter-us-immigration-landscape>.

<sup>87</sup> Between FY2004 and FY2014, appropriations for CBP increased from \$4.9 billion to \$12.2 billion, and funding for ICE increased from \$3.4 billion to \$5.6 billion. CRS analysis of P.L. 113-76 and P.L. 108-90.

In contrast, the number of returns has fluctuated over the past 25 years, and is at its lowest level since the late 1960s.<sup>88</sup> Because returns are mostly of Mexican nationals who have been apprehended by the Border Patrol, they are closely tied with border patrol apprehensions (**Figure 1**).<sup>89</sup> The divergence between the number of returns and border patrol apprehensions since FY2012 may be partially attributable to the rise in the number of apprehensions of persons from countries other than Mexico. For example, foreign nationals from countries other than Mexico accounted for 47% of all border patrol apprehensions in FY2013, compared to 13% in FY2010.<sup>90</sup> Another factor may be CBP’s effort in recent years to promote “high consequence” enforcement for unauthorized Mexicans apprehended at the border (this is known as the Consequence Delivery System). Historically, immigration agents permitted most Mexicans apprehended at the border to voluntarily return to Mexico without any penalty. Since 2005, CBP has limited voluntary returns in favor of formal removals (e.g., standard removal proceedings, expedited removal) and criminal changes (e.g., for illegal entry or re-entry after deportation).<sup>91</sup>

With the exception of FY2003, the number of returns exceeded 1 million persons a year between FY1997 and FY2006. Since FY2004 the number of returns has steadily decreased to a low of 162,814 in FY2014. Notably, FY2011 was the first year since FY1941 that the number of returns was less than the number of removals.

## Removal Statistics Since FY2002

With certain exceptions, a removal proceeding under INA §240 is, according to the statute, the “exclusive procedure” for determining whether an alien should be removed from the United States. However, as discussed in this section, there has been a recent trend toward using expedited procedures.

**Table 1. Total Number of Removals: OIS and ICE**  
FY2002-FY2014

Fiscal Year	OIS	ICE
2002	165,168	122,587
2003	211,098	157,080
2004	240,665	175,106

<sup>88</sup> Department of Homeland Security, “DHS Released End of Year Statistics,” press release, December 19, 2014; and Department of Homeland Security, Office of Immigration Statistics, *Yearbook of Immigration Statistics: 2013*, Washington, DC, Table 39; <http://www.dhs.gov/yearbook-immigration-statistics-2013-enforcement-actions>.

<sup>89</sup> For more information on apprehensions and the Border Patrol, see CRS Report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*, by Lisa Seghetti.

<sup>90</sup> Non-Mexican nationals accounted for 36% of apprehensions in FY2013, 27% of apprehensions in FY2012, and 16% of apprehensions in FY2011. For FY2014 data: CRS analysis of data from U.S. Customs and Border Protection, *CBP Border Security Report: Fiscal Year 2014*, Washington, DC, December 19, 2014, p. 1. For FY2013 data see Customs and Border Protection, *United States Border Patrol, Sector Profile- Fiscal Year 2013*, <http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%202013%20Profile.pdf>. For FY2011 and FY2012 data see John F. Simanski and Lesley M. Sapp, *Immigration Enforcement Actions: 2012*, Department of Homeland Security, Office of Immigration Statistics, Washington, DC, December 2013, p. 3. For FY2010 CRS performed an analysis of unpublished data from CBP.

<sup>91</sup> For a discussion of the Consequence Delivery System, see CRS Report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*, by Lisa Seghetti.

Fiscal Year	OIS	ICE
2005	246,431	180,189
2006	280,974	207,776
2007	319,382	291,060
2008	359,795	369,221
2009	391,932	389,834
2010	383,031	392,862
2011	387,134	396,906
2012	418,397	409,849
2013	438,421	368,644
2014	414,481	315,943

**Source:** Department of Homeland Security, “DHS Released End of Year Statistics,” press release, December 19, 2014. Department of Homeland Security, Office of Immigration Statistics, *Yearbook of Immigration Statistics: 2013*, Washington, DC, Table 39; <http://www.dhs.gov/yearbook-immigration-statistics-2013-enforcement-actions>; Immigration and Customs Enforcement, *FY 2013 ICE Immigration Removals*, ERO Annual Report, Washington, DC, <http://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf>; and unpublished data provided to CRS by ICE.

**Note:** ICE removals include voluntary departures (INA §240B) while OIS removals do not.

OIS data show that the number of removals more than doubled between FY2002 and FY2009, from 165,168 to 393,457. The number of removals then decreased by approximately 8,000 between FY2009 and FY2010, and then increased more than 30,000 between FY2010 and FY2012. According to OIS, the highest number of removals occurred in FY2013.

As **Table 1** shows, statistics provided by ICE present a slightly different picture. According to ICE data, total removals increased more than threefold between FY2002 and FY2012, from 122,587 to 409,849, and then decreased in FY2013 and FY2014. The largest proportional increases in removals occurred between FY2005 and FY2008. Removals increased 15% between FY2005 and FY2006, 40% between FY2006 and FY2007, and 27% between FY2007 and FY2008. Between FY2012 and FY2014, the number of removals decreased 23%, to the lowest level since FY2007.

Interestingly, ICE appears to have accounted for the overwhelming majority of all DHS’ removals between FY2007 and FY2012; this was not the case between FY2002 and FY2006 or in FY2013 and FY2014. In other words, the growth in removals between FY2002 and FY2006 and between FY2012 and FY2013 was driven by removals of those aliens apprehended at or between ports of entry. The decline in removals between FY2013 and FY2014 was solely a result of the decline in those removed by ICE.

## Removals by Type

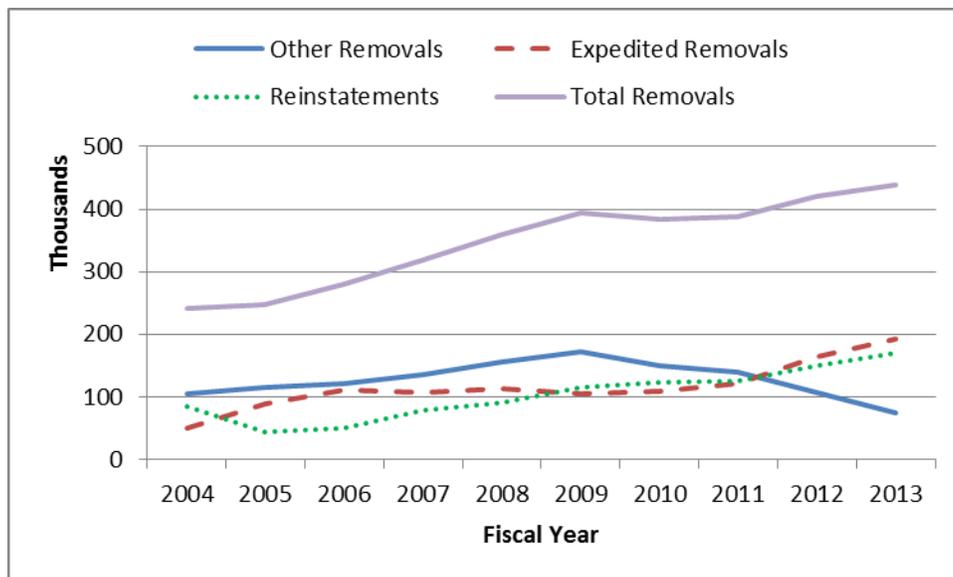
OIS and ICE data show similar trends regarding the increasing use of more streamlined removal processes and the decrease in the number of removals processed by the immigration courts.

## OIS Data

As shown in **Figure 2**, the numbers of all types of removals increased between FY2004 and FY2013. The numbers of expedited removals of arriving aliens and reinstatements have increased significantly since FY2004, reaching their highest levels in FY2013. There were 193,032 expedited removals and 170,247 reinstatements in FY2013. Since FY2004, the number of aliens subject to expedited removal increased approximately threefold and the number of reinstatements of removal orders more than doubled. The number of standard removals, voluntary departures, and expedited removals of criminal aliens (“other removals”) increased between FY2004 and FY2011, and then decreased in FY2012 and FY2013. Thus, since FY2010 the increase in the total number of removals has been driven exclusively by the increases in expedited removals of arriving aliens and reinstatements.

**Figure 2. Removals by Type**

Office of Immigration Statistics Data: FY2004-FY2013



**Source:** For FY2004-FY2009: Unpublished data from DHS Office of Immigration Statistics; for FY2010: John F. Simanski and Lesley M. Sapp, *Immigration Enforcement Actions: 2012*, Department of Homeland Security, Office of Immigration Statistics, Washington, DC, December 2013, p. 5; for FY2011-FY2013: John F. Simanski, *Immigration Enforcement Actions: 2013*, Department of Homeland Security, Office of Immigration Statistics, Washington, DC, September 2014, p. 5.

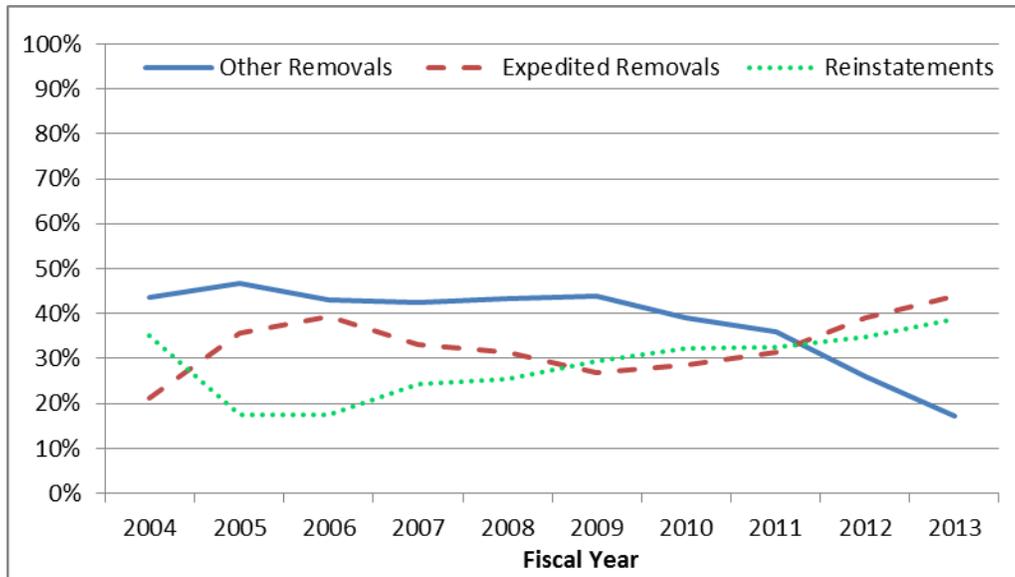
**Note:** Other removals include standard removals (INA §240), expedited removals of criminal aliens (INA §238), and voluntary departures (INA §240B). Expedited removals only include removals under INA §235(b). Data for FY2014 were not available at time of publication.

Standard removals, voluntary departures, and expedited removals of criminal aliens (“other removals”) accounted for 17% of all removals in FY2013, while expedited removals comprised 44% of those removed and reinstatements accounted for almost 39% of all removals (see **Figure 3**). Comparatively, approximately 44% of all removals were other removals in FY2004; since then these types of removals have comprised a smaller and shrinking proportion of the removed population. Expedited removals accounted for approximately 21% of those removed in FY2004, but 35.7% of all removals in FY2005. The increase in the proportion (and overall numbers) of

expedited removals at that time may be attributable to the expansion of the categories of aliens subject to expedited removal.<sup>92</sup> Reinstatements declined as a percentage of removals between FY2004 and FY2005, and then steadily increased. Thus, as discussed, the increase in removals during the past decade has been driven by an increase in the use of expedited removals and reinstatements of removal orders.

**Figure 3. Removals by Type, as a Percentage of Total Removals**

Office of Immigration Statistics Data: FY2004-FY2013



**Source:** For FY2004-FY2009: Unpublished data from DHS Office of Immigration Statistics; for FY2010: John F. Simanski and Lesley M. Sapp, *Immigration Enforcement Actions: 2012*, Department of Homeland Security, Office of Immigration Statistics, Washington, DC, December 2013, p. 5; for FY2011-FY2013: John F. Simanski, *Immigration Enforcement Actions: 2013*, Department of Homeland Security, Office of Immigration Statistics, Washington, DC, September 2014, p. 5.

**Note:** Other removals include standard removals (INA §240), expedited removals of criminal (INA §238) and voluntary departures (INA §240B). Expedited removals only includes removals under INA §235(b). Reinstatements of removal are under INA §241(a)(5). Data for FY2014 were not available at time of publication.

### ICE Data

The data from ICE are presented differently than those from OIS simply by way of how the entities maintain their data. In addition, OIS statistics include those apprehended at and between ports of entry (i.e., those apprehended by CBP) while ICE provides data on removals and returns of those apprehended in the interior of the country by that agency.

As shown in **Figure 4**, more than 90% of those repatriated in FY2013 were subject to removal, while approximately 10% were classified as returns. Of the 332,538 aliens formally removed (i.e., not given voluntary departure or allowed to withdraw their application) by ICE in that year, 35%

<sup>92</sup> For a discussion of the expansion of expedited removal, see CRS Report RL33109, *Immigration Policy on Expedited Removal of Aliens*, by Alison Siskin and Ruth Ellen Wasem.

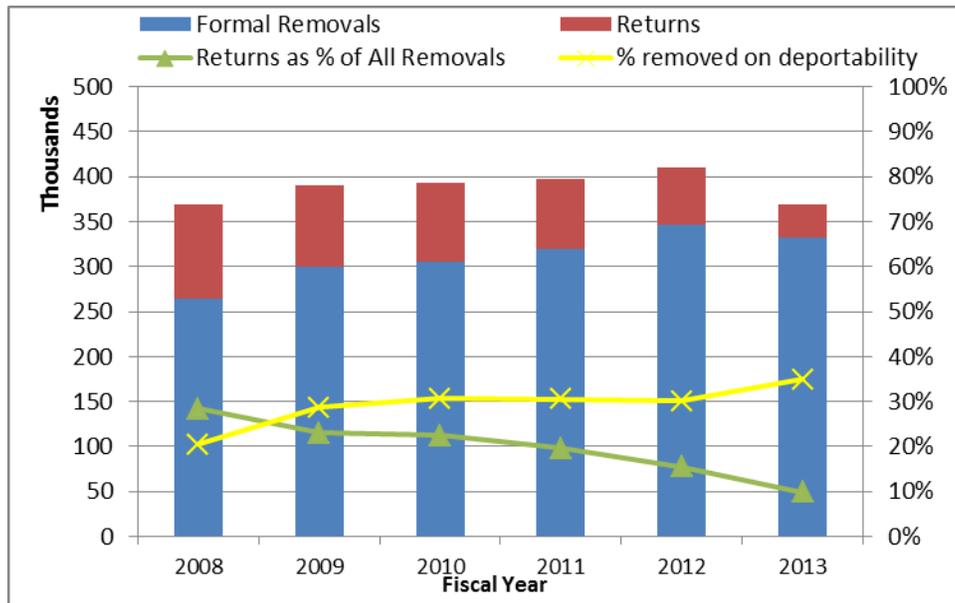
(115,940) were removed under the INA grounds of deportability and 65% (216,598) were removed under the INA grounds of inadmissibility.<sup>93</sup>

Returns (e.g., voluntary departure, voluntary return witnessed by ICE), as both a percentage of all removals (i.e., removals and formal returns together) and an absolute number, decreased between FY2008 and FY2012. Notably, the overall decrease in removals between FY2012 and FY2013 was driven by a decrease in the number of returns (see **Figure 4**).<sup>94</sup>

In addition, of the aliens formally removed (as opposed to returned) since FY2008, the overwhelming majority have been removed under the grounds of inadmissibility rather than the grounds of deportability. Nonetheless, there has been an increase in the proportion of those removed under the grounds of deportability over the six years, from 21% in FY2008 to 35% in FY2013.

**Figure 4. All Removals: Formal Removals and Returns**

Immigration and Customs Enforcement Data: FY2008-FY2013



**Source:** CRS analysis of unpublished data from DHS Immigration and Customs Enforcement (ICE).

**Note:** Data for FY2014 were not available at time of publication.

## Removals by Country

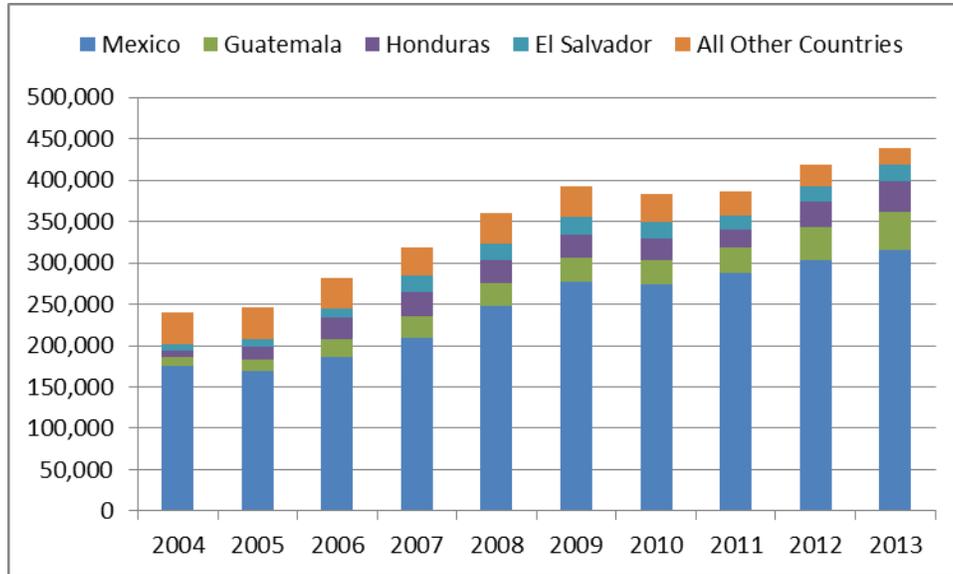
Over the 10-year period from FY2004 through FY2013, the majority of removals were of Mexican nationals (70.5%) (see **Figure 5** and **Table A-1**). In FY2013, four countries accounted for approximately 96% of all removals: Mexico (71.8%), Guatemala (10.7%), Honduras (8.3%), and El Salvador (4.8%). No other country represented more than 1% of all removals in FY2013.

<sup>93</sup> CRS analysis of unpublished data provided by ICE.

<sup>94</sup> Between FY2012 and FY2013, the number of removals decreased from 346,487 to 332,538 (4%), while the number of returns decreased from 63,362 to 36,106 (43%). CRS analysis of unpublished data from DHS ICE.

Over the 10-year period there was a significant increase in the number of people removed to those countries. The number of people removed from El Salvador more than doubled over the 10-year period, while the number of people removed from Honduras more than tripled, and the number of people removed from Guatemala increased more than four-fold. (See **Table A-1**.) The number of those removed from Mexico increased by 79%, much less of a percentage increase than for the three Central American countries.

**Figure 5. Removals by Country**  
FY2004-FY2013



**Source:** Department of Homeland Security, Office of Immigration Statistics, *Yearbook of Immigration Statistics: 2013*, Washington, DC, Table 41.

**Notes:** For the numbers and percentages, see **Table A-1**. Data for FY2014 were not available at time of publication.

## Outcomes of Immigration Proceedings

In an immigration proceeding, an immigration judge must decide as part of the standard removal process whether the charges against an alien should be sustained. If the charges are not sustained or the alien establishes eligibility for naturalization, the judge terminates the case. If the charges are sustained, the judge determines whether to order the alien removed, grant voluntary departure,<sup>95</sup> or grant relief (discussed in the next section).<sup>96</sup> In addition, there are some cases that are completed without the immigration judge rendering a decision. Most of these cases are administrative closures.<sup>97</sup> As **Figure 6** shows, in FY2013 the majority of completed cases resulted in removals (voluntary departures are included in removals), while 18% of the completions were

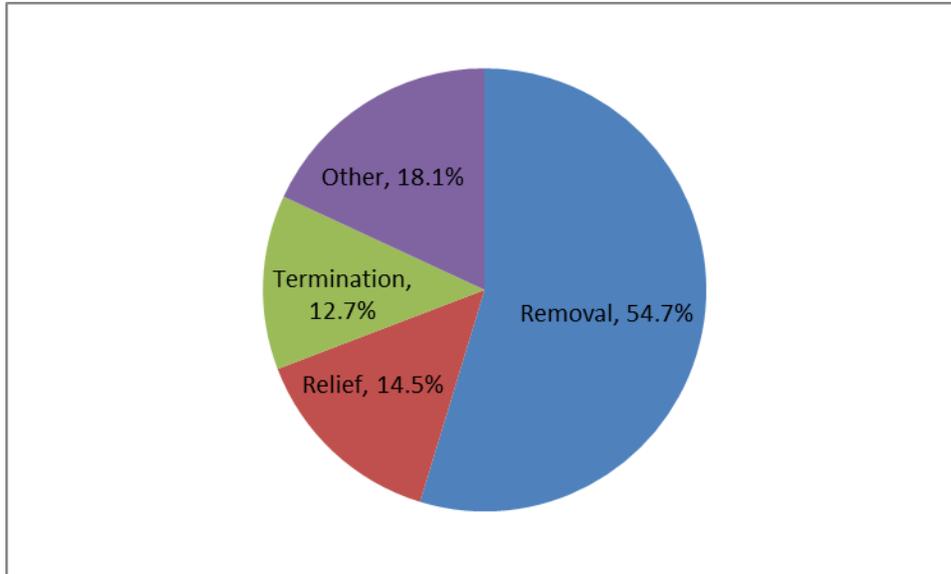
<sup>95</sup> EOIR considers voluntary departure a removal in their statistics. U.S. Department of Justice, Executive Office for Immigration Review, *FY2013 Statistical Year Book*, Falls Church, VA, April 2014, p. 01.

<sup>96</sup> U.S. Department of Justice, Executive Office for Immigration Review, *FY2013 Statistical Year Book*, Falls Church, VA, April 2014, pp. C2-C5.

<sup>97</sup> An administrative closure is the temporary removal of a case from an immigration judge’s calendar.

other (mostly administrative) closures. In addition, approximately 13% of the decisions were terminations, and 15% were grants of relief.

**Figure 6. Outcomes of Completed Cases: FY2013**



**Source:** CRS analysis of data from the U.S. Department of Justice, Executive Office for Immigration Review, FY2013 Statistical Year Book, Falls Church, VA, April 2014, pp. D2-D5.

**Note:** Total number of completions was 192,065. Voluntary departures are counted as removals. The “other” category includes administrative closures, transfers, changes of venues, failure of prosecute, Temporary Protected Status (TPS), and other administrative completions. Over 93% of the other category is administrative closures.

## Relief from Removal

There are mechanisms under the INA that allow certain removable aliens to remain in the United States, either permanently or temporarily. This section provides an overview of the types of relief from removal available under the INA. It begins with a discussion of the types of relief that confer or can lead to lawful permanent resident (LPR) status for an alien. The discussion then shifts to types of relief from removal that allow aliens to remain in the United States but do not confer an immigration status that would allow them to remain in the country permanently. Aliens in removal proceedings may apply for more than one type of relief.<sup>98</sup> Among the proceedings initially decided by an immigration judge in FY2013, 40% of aliens had applications for some type of relief from removal.<sup>99</sup>

<sup>98</sup> 8 C.F.R. §204.21(c)(2).

<sup>99</sup> Total number of completions (i.e., when the immigration judge makes a determination) was 173,018 and 68,566 contained applications for relief from removal. U.S. Department of Justice, Executive Office for Immigration Review, *FY2013 Statistical Year Book*, Falls Church, VA, April 2014, p. 11.

## Permanent Relief from Removal

Some types of relief from removal allow an alien to adjust to LPR status either immediately or at a later time. LPRs, also known as immigrants, are foreign nationals who come to live permanently in the United States.

## Cancellation of Removal

Cancellation of removal confers LPR status on certain removable noncitizens who have substantial ties to the United States or are of humanitarian concern (i.e., battered aliens).<sup>100</sup> In general, an alien applying for cancellation of removal must have substantial ties to the United States, be of good moral character, and not have been convicted of a crime that makes him or her removable. Requirements differ for aliens who are LPRs and aliens who are nonimmigrants or unauthorized aliens.<sup>101</sup> For example, nonimmigrants or unauthorized aliens have to demonstrate that their removal would cause extreme and unusual hardship to their families in the United States. This requirement does not apply to LPRs.<sup>102</sup> (For a discussion of the different types of cancellation of removal, see **Appendix B**.) In addition, the criminal offenses that make an alien ineligible for cancellation of removal are generally broader for nonpermanent residents than for permanent residents.

Applications for cancellation of removal can only be made in removal proceedings, and decisions to grant relief are made on a case-by-case basis. Because cancellation of removal is a discretionary form of relief (i.e., it is granted at the discretion of an immigration judge), there is no fixed standard of who merits relief. The burden is on the alien to show that he or she is eligible for and deserves the relief.<sup>103</sup> With few exceptions, grants of cancellation of removal are limited to 4,000 LPRs and 4,000 nonpermanent residents each fiscal year.<sup>104</sup> There were 3,542 LPRs and 3,922 non-LPRs who received cancellation of removal in FY2013.<sup>105</sup>

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<sup>100</sup> For a discussion of cancellation of removal in the context of possible legalization, see CRS Report R42958, *Unauthorized Aliens: Policy Options for Providing Targeted Immigration Relief*, by Andorra Bruno.

<sup>101</sup> In statute this is called cancellation of removal for nonpermanent residents.

<sup>102</sup> There are also special rules for cancellation of removal for Nicaraguan Adjustment and Central American Relief Act (NACARA) beneficiaries and battered alien spouses and children. See archived CRS Report 98-3, *The Nicaraguan Adjustment and Central American Relief Act: Hardship Relief and Long-Term Illegal Aliens*, by Larry M. Eig, and CRS Report R42477, *Immigration Provisions of the Violence Against Women Act (VAWA)*, by William A. Kandel.

<sup>103</sup> Factors that may be considered favorable to an alien's request for cancellation of removal include the alien's family ties in the United States, service in the U.S. Armed Forces, history of employment, evidence of business ties, and proof of rehabilitation if a criminal record exists. Gordon, Charles, et al., *Immigration Law and Procedure* §64.04[2][b][iii].

<sup>104</sup> If the cap is reached, the immigration judge or BIA can reserve decisions until the next fiscal year for cases that merit relief.

<sup>105</sup> The number of cancellation of removal grants for non-LPRs includes 282 cases that were not subject to the numerical limits, and 15 cases that were technically suspensions of deportation. U.S. Department of Justice, Executive Office for Immigration Review, *FY2013 Statistical Year Book*, Falls Church, VA, April 2014, p. N1.

## **Defensive Asylum<sup>106</sup>**

Foreign nationals seeking asylum must demonstrate a well-founded fear that if they were returned home they would be persecuted based upon one of five characteristics: race, religion, nationality, membership in a particular social group, or political opinion.<sup>107</sup> Foreign nationals arriving or present in the United States may apply for asylum with U.S. Citizenship and Immigration Services (USCIS) after arrival into the country (affirmative claims), or they may seek asylum before an immigration judge during removal proceedings (defensive claims). This section focuses on defensive claims for asylum since those only occur once someone is placed into removal proceedings.

Defensive applications for asylum are raised when a foreign national in removal proceedings asserts a claim for asylum as a defense to his or her removal. Generally, the alien raises the issue of asylum at the beginning of the removal process. Aliens who are granted asylum may apply for LPR status after one year.

Foreign nationals who participated in the persecution of other people are excluded from receiving asylum. The INA outlines other conditions for mandatory denials of asylum claims, including the following cases: the alien has been convicted of a serious crime and is a danger to the community; there are reasons for believing that the alien has committed a serious nonpolitical crime outside the United States; the alien has been firmly resettled in another country; or “there are reasonable grounds for regarding the alien as a danger to the security of the United States.”<sup>108</sup> Under statute, an alien who has been convicted of an aggravated felony is considered to have been convicted of a serious crime.

There were 21,717 foreign nationals who requested asylum before an immigration judge during removal proceedings in FY2013. During the same year, immigration judges rendered decisions in 8,833 removal cases where a foreign national requested asylum, and the judges granted asylum in 30% of those cases.<sup>109</sup>

## **Adjustment to LPR Status**

Adjustment of status is another type of permanent relief from removal. This is the process of becoming an LPR in the United States without having to go abroad to apply for a visa.<sup>110</sup> At their discretion, immigration judges may adjust the status of a non-lawful permanent resident alien if certain requirements are met: (1) the alien is the beneficiary of an approved visa petition for LPR status based on family or employment ties; (2) an immigrant visa is immediately available; and

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<sup>106</sup> This section is adapted from CRS Report R41753, *Asylum and “Credible Fear” Issues in U.S. Immigration Policy*, by Ruth Ellen Wasem.

<sup>107</sup> INA §208; 8 U.S.C. §1158.

<sup>108</sup> INA §208(b)(2); 8 U.S.C. §1158.

<sup>109</sup> The grant rate is calculated using the number of defensive asylum applications that were either denied or granted during FY2013. Notably, the number of grants and denials differs from the number of applications for several reasons. First, some cases are adjudicated in a different year from when the application is received; and secondly, not all cases end with a ruling by an immigration judge (e.g., withdraws, administrative closures.) U.S. Department of Justice, Executive Office of Immigration Review, *FY 2013 Statistical Yearbook*, Falls Church, VA, April, 2014, pp. 11, K3.

<sup>110</sup> For a fuller discussion of adjustment of status, see CRS Report R42958, *Unauthorized Aliens: Policy Options for Providing Targeted Immigration Relief*, by Andorra Bruno.

(3) the alien is not otherwise inadmissible. There were 3,868 foreign nationals in immigration proceedings who received adjustment of status in FY2013.<sup>111</sup>

## Temporary Types of Relief from Removal

Several types of relief from removal permit an alien to remain in the United States for a temporary, but unspecified, period of time. These types of relief are generally given to foreign nationals until conditions in their home countries change so that it is safe for them to return.

## Withholding of Removal

Withholding of removal is closely related to, but different from, asylum.<sup>112</sup> The INA prevents the U.S. government from removing an alien to a country where the government has determined that the alien's life would be threatened because of his or her race, religion, nationality, membership in a particular social group, or political opinion.<sup>113</sup> Whereas asylum is a discretionary form of relief, an immigration judge must grant withholding if the alien meets the requirements.<sup>114</sup> Under INA §241(b)(3) an applicant for asylum is also an applicant for withholding of removal.<sup>115</sup> An alien is ineligible for withholding of removal if

- the alien ordered, incited, assisted, or otherwise participated in the persecution of another individual;
- the alien was convicted of a particularly serious crime and is a danger to the community;<sup>116</sup>
- there is serious reason to believe that the alien committed a serious nonpolitical crime before arriving in the United States; or
- there are reasonable grounds to believe that the alien presents a security risk to the United States.

Unlike asylum, withholding of removal is not a pathway to LPR status, as the relief is temporary.<sup>117</sup> Foreign nationals granted withholding of removal may be removed to a third

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<sup>111</sup> U.S. Department of Justice, Executive Office of Immigration Review, *FY 2013 Statistical Yearbook*, Falls Church, VA, April, 2014, p. N1.

<sup>112</sup> For more on the differences between asylum and withholding of removal, see CRS Report RL32480, *Immigration Consequences of Criminal Activity*, by Michael John Garcia.

<sup>113</sup> INA §214(b)(3), 8 U.S.C. §1231(b)(3).

<sup>114</sup> This form of relief fulfills the United States' obligations as a party to the 1967 United Nations Protocol Relating to the Status of Refugees.

<sup>115</sup> For a discussion on this provision, see U.S. Department of Justice, Executive Office of Immigration Review, *FY 2013 Statistical Yearbook*, Falls Church, VA, April 2014, p K5.

<sup>116</sup> The INA states that an alien who has been convicted of an aggravated felony (or felonies) for which the alien has been sentenced to an aggregate term of imprisonment of at least five years is considered to have committed a particularly serious crime. INA §214(b)(3)(B), 8 U.S.C. §1231(b)(3)(B).

<sup>117</sup> Unlike asylum, not all aggravated felonies automatically make an alien ineligible for withholding of removal. To be ineligible for withholding of removal, the alien must have been convicted of one or more aggravated felonies for which the aggregate sentence imposed was five years or more. INA §241(b)(3); 8 U.S.C. §1231(b)(3).

country provided that the country will allow their entry.<sup>118</sup> There were 1,518 grants and 9,983 denials of withholding of removal (i.e., a 13% grant rate) in FY2013.<sup>119</sup>

## **Convention Against Torture**

The United States is a party to the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT).<sup>120</sup> CAT Article 3 requires that no State Party shall expel, return, or extradite a person to another country where “there are substantial grounds for believing that he would be in danger of being subjected to torture.” The regulations implementing CAT prohibit the removal of aliens to countries where they would more likely than not be subjected to torture.<sup>121</sup>

If country conditions change and the U.S. government believes the foreign national would no longer face torture in the country, the foreign national can be removed. Although some categories of foreign nationals are generally ineligible to receive asylum or withholding of removal (e.g., those aliens removable on security-related grounds or who have been convicted of certain criminal offenses), CAT protections prevent the removal of **any** foreign national to a country where he or she would be more likely than not to face torture.<sup>122</sup> Of the cases where a decision on the aliens’ applications for CAT protections was made by an immigration judge, CAT was granted in 506 cases and denied in 9,575 cases.<sup>123</sup>

## **Temporary Protected Status<sup>124</sup>**

Temporary Protected Status (TPS) is blanket relief that may be granted, provided that doing so is consistent with U.S. national interests, under the following conditions: there is ongoing armed conflict posing serious threat to personal safety; a foreign state requests TPS because it

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<sup>118</sup> U.S. Department of Justice, Executive Office for Immigration Review, *FY2013 Statistical Year Book*, Falls Church, VA, April 2014, p. K5.

<sup>119</sup> Grants of asylum and withholding of removal tend to be jointly considered. In FY2013, there was a grant rate of 61% for asylum and withholding of removal. U.S. Department of Justice, Executive Office for Immigration Review, *FY2012 Statistical Year Book*, Falls Church, VA, April 2014, p. K6.

<sup>120</sup> For more information on CAT see, CRS Report RL32276, *The U.N. Convention Against Torture: Overview of U.S. Implementation Policy Concerning the Removal of Aliens*, by Michael John Garcia.

<sup>121</sup> Regulations define torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” 8 C.F.R. §1208.18(a)(1). For a full legal analysis of the Torture Convention, see CRS Report RL32276, *The U.N. Convention Against Torture: Overview of U.S. Implementation Policy Concerning the Removal of Aliens*, by Michael John Garcia.

<sup>122</sup> Technically, relief under CAT is granted through the withholding of removal or deferral of removal. Unless the alien is of a class subject to mandatory denial of withholding of removal on security, criminal, or related grounds, CAT-based relief is granted in the form of withholding of removal. Aliens who are not eligible for withholding of removal are granted deferral of removal. 8 C.F.R. §1208.16(c)(4) and §1208.17.

<sup>123</sup> U.S. Department of Justice, Executive Office for Immigration Review, *FY2013 Statistical Year Book*, Falls Church, VA, April 2014, p. M1.

<sup>124</sup> This section is adapted from CRS Report RS20844, *Temporary Protected Status: Current Immigration Policy and Issues*, by Lisa Seghetti, Karma Ester, and Ruth Ellen Wasem.

temporarily cannot handle the return of nationals due to environmental disaster; or there are extraordinary and temporary conditions in a foreign state that prevent aliens from returning.<sup>125</sup>

The Secretary of Homeland Security can issue TPS for periods of 6 to 18 months and can extend these periods if conditions do not change in the designated country.<sup>126</sup> To receive TPS, eligible foreign nationals must register with USCIS. TPS is not an immigration status, and aliens who receive TPS are not on an immigration track that leads to LPR status.<sup>127</sup> As of December 2014, 11 countries have TPS.<sup>128</sup>

## **Deferred Enforced Departure**

Deferred Enforced Departure (DED) does not confer an immigration status. The granting of DED is not based upon any specific statutory authority, but instead is typically premised upon the Executive Branch's independent constitutional authority.<sup>129</sup> The discretionary procedures of DED are used to provide relief the Administration feels is appropriate by balancing judgments regarding foreign policy, humanitarian, and immigration concerns. Aliens covered by DED are usually not subject to removal from the United States for a designated period of time. Unlike TPS, aliens do not register with USCIS, but receive DED when they are in removal proceedings. The President sets the parameters of DED. For example, the President may authorize that aliens with DED receive work authorization. Only Liberians currently have DED, which is set to expire on September 30, 2016.<sup>130</sup>

## **Deferred Action**

Deferred action is not an immigration status nor does it have a statutory authority; it is a form of administrative discretion.<sup>131</sup> DHS may decline to institute removal proceedings, terminate proceedings, or decline to execute a final order of removal. Approval of deferred action means that no action will be taken (for a specified time or indefinitely) against an apparently removable alien.<sup>132</sup> For example, under an initiative known as Deferred Action for Childhood Arrivals (DACA) certain individuals without a lawful immigration status who were brought to the

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<sup>125</sup> INA §244(h); 8 U.S.C. §1254a.

<sup>126</sup> 8 U.S.C. §240.

<sup>127</sup> INA §244(h); 8 U.S.C. §1254a.

<sup>128</sup> The countries are El Salvador, Guinea, Haiti, Honduras, Liberia, Nicaragua, Sierra Leone, Somalia, Sudan, South Sudan, and Syria. U.S. Citizenship and Immigration Services, *Temporary Protected Status*, Washington, DC, January 7, 2015; [http://www.uscis.gov/humanitarian/temporary-protected-status-deferred-enforced-departure/temporary-protected-status#Countries Currently Designated for TPS](http://www.uscis.gov/humanitarian/temporary-protected-status-deferred-enforced-departure/temporary-protected-status#Countries%20Currently%20Designated%20for%20TPS).

<sup>129</sup> For example, see United States Citizenship and Immigration Services, "Deferred Enforced Departure," October 13, 2011.

<sup>130</sup> Liberians were originally given DED by President George W. Bush on October 1, 2007. Most recently, on September 26, 2014, President Barack Obama extended DED for Liberians until September 30, 2016. The White House, Office of the Press Secretary, "Presidential Memorandum—Deferred Enforced Departure for Liberians," press release, September 26, 2014.

<sup>131</sup> Deferred action was originally known as "nonpriority." For a fuller discussion of deferred action, see Andorra Bruno, Todd Garvey, and Kate Manuel, et al., *Analysis of June 15, 2012 DHS Memorandum, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children*, Congressional Research Service, Congressional Distribution Memorandum, July 13, 2012.

<sup>132</sup> Charles Gordon, Stanley Mailman, and Stephen Yale-Loehr, et al., *Immigration Law and Procedure*, vol. 6, Section 72.03[2][h].

United States as children and meet other criteria may be granted deferred action for two years, subject to renewal.<sup>133</sup>

## **Conclusion**

The Immigration and Nationality Act contains several different processes to effectuate the removal of aliens, as well as mechanisms to allow select aliens to remain in the United States either temporarily or permanently. During the previous two Administrations there has been a concerted effort to increase the number of removals by increasing the use of streamlined removal processes and decreasingly allowing voluntary departure and withdraws of application. If Congress considers reforms to the immigration system, the criteria and mechanisms for removing aliens from, and authorizing aliens to remain in, the United States may become central issues.

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<sup>133</sup> For a discussion of DACA, see CRS Report R43747, *Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions*, by Andorra Bruno.

## Appendix A. Removals by Country: Top 10 Countries

**Table A-1. Removals by Country**  
Top 10 Countries from FY2004 through FY2013

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Total
<b>Total Removals</b>	<b>240,665</b>	<b>246,431</b>	<b>280,974</b>	<b>319,382</b>	<b>359,795</b>	<b>391,932</b>	<b>383,031</b>	<b>388,409</b>	<b>419,384</b>	<b>438,421</b>	<b>3,468,424</b>
Mexico	175,865	169,031	186,726	208,996	247,263	277,185	273,915	289,347	306,870	314,904	2,444,608
% of total	73.1%	68.6%	66.5%	65.4%	68.7%	70.7%	71.5%	74.5%	73.2%	71.8%	70.5%
Guatemala	9,729	14,522	20,527	25,898	27,527	29,641	29,710	30,343	38,677	46,866	273,662
% of total	4.0%	5.9%	7.3%	8.1%	7.7%	7.6%	7.8%	7.8%	9.2%	10.7%	7.9%
Honduras	8,752	15,572	27,060	29,737	28,885	27,283	25,121	22,028	31,515	36,526	252,703
% of total	3.6%	6.3%	9.6%	9.3%	8.0%	7.0%	6.6%	5.7%	7.5%	8.3%	7.3%
El Salvador	7,269	8,305	11,050	20,045	20,050	20,844	20,347	17,381	18,677	20,862	165,146
% of total	3.0%	3.4%	3.9%	6.3%	5.6%	5.3%	5.3%	4.5%	4.5%	4.8%	4.8%
Brazil	6,390	7,097	4,217	4,210	3,836	3,724	3,533	3,350	2,256	1,411	40,165
% of total	2.7%	2.9%	1.5%	1.3%	1.1%	1.0%	0.9%	0.9%	0.5%	0.3%	1.2%
Dominican Republic	3,760	3,210	3,107	2,990	3,232	3,576	3,371	2,893	2,833	2,278	31,285
% of total	1.6%	1.3%	1.1%	0.9%	0.9%	0.9%	0.9%	0.7%	0.7%	0.5%	0.9%
Colombia	2,725	2,594	2,788	2,993	2,590	2,714	2,403	1,900	1,499	1,421	23,718
% of total	1.1%	1.1%	1.0%	0.9%	0.7%	0.7%	0.6%	0.5%	0.4%	0.3%	0.7%
Ecuador	1,116	1,490	1,750	1,564	2,330	2,383	2,385	1,716	1,720	1,491	17,988
% of total	0.5%	0.6%	0.6%	0.5%	0.6%	0.6%	0.6%	0.4%	0.4%	0.3%	0.5%
Nicaragua	947	1,292	2,446	2,307	2,257	2,172	1,903	1,502	1,373	1,337	17,563
% of total	0.4%	0.5%	0.9%	0.7%	0.6%	0.6%	0.5%	0.4%	0.3%	0.3%	0.5%
Jamaica	2,541	2,023	1,662	1,490	1,628	1,662	1,483	1,475	1,311	1,101	16,383
% of total	1.1%	0.8%	0.6%	0.5%	0.5%	0.4%	0.4%	0.4%	0.3%	0.3%	0.5%

**Source:** CRS analysis of Department of Homeland Security, Office of Immigration Statistics, *Yearbook of Immigration Statistics: 2013*, Washington, DC, Table 41.

## Appendix B. Types of Cancellation of Removal

Cancellation of removal was created in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA, P.L. 104-208). It replaced two other forms of relief from removal,<sup>134</sup> and the eligibility requirements are generally tighter for those who do not have LPR status than they were in the forms of relief it replaced.<sup>135</sup> Certain aliens are ineligible for cancellation of removal, including those who are removable on security or terrorism grounds and those who have previously received cancellation of removal.<sup>136</sup>

INA §240A(a) gives the Attorney General the ability to cancel the removal of an alien who is inadmissible or deportable and adjust the alien's status to LPR if the alien

- has been an LPR for at least five years,
- has resided in the United States continuously<sup>137</sup> for seven years after being admitted<sup>138</sup> as an LPR, and
- has not been convicted of an aggravated felony.<sup>139</sup>

The Attorney General may also cancel the removal of an alien who is inadmissible or deportable and adjust the alien's status to LPR if the alien

- has been physically present in the United States for a continuous period of 10 years prior to the date of application for relief;
- has been a person of good moral character,<sup>140</sup>

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<sup>134</sup> Relief under former INA §212(c) and suspension of deportation.

<sup>135</sup> For a discussion of the changes made by the 1996 Act, see CRS Report 97-911, *Suspension of Deportation: Tighter Standards and Their Application to Central Americans and Other Long-Term Residents*, by Larry M. Eig, and CRS Report 97-810, *Central American Asylum Seekers: Impact of 1996 Immigration Law*, by Ruth Ellen Wasem. Both reports are archived and available from the authors.

<sup>136</sup> Other aliens who are ineligible for cancellation of removal include aliens who entered as crewmen before June 30, 1964; aliens who were admitted as cultural exchange visitors (J visa holders) and did not fulfill their two-year home residency requirement; aliens admitted as exchange visitors to receive graduate medical education or training; or aliens who ordered, incited, assisted or otherwise participated in the persecution of others based on their race, religion, nationality, membership in a social group, or political opinion. (INA §240a(c); 8 U.S.C. §1229b(c)).

<sup>137</sup> Continuous residence ends when the alien is served an NTA or commits an offense that makes him or her removable. In addition, aliens who have served at least 24 months of active duty in the armed forces are exempted from the continuous residence requirement. (INA §240A(d); 8 U.S.C. §1229b(d)).

<sup>138</sup> Admission is defined in INA §101(a)(13) as “lawful entry into the United States after inspection and authorization by an immigration officer.”

<sup>139</sup> Although the INA does not require a specific showing of hardship, the factors that guide the judge's exercise of discretion are similar to the factors required to demonstrate hardship. Gordon, Charles, et al., *Immigration Law and Procedure* §64.04[2][b].

<sup>140</sup> INA §101(f) lists characteristics that would preclude one from being found to have good moral character, but it does not provide an all-encompassing definition of the acts that could cause a person to be found to lack a “good moral character.” Included in the preclusions found in INA §101(f) are being a habitual drunkard, having income derived primarily from gambling, giving false testimony to gain an immigration benefit, or having been convicted and confined to prison for an aggregate of 180 days.

- has not been convicted of a criminal offense that would make the alien inadmissible or deportable, or convicted of an offense related to document fraud or falsely claiming citizenship; and
- establishes that removal would result in *exceptional and extremely unusual hardship* to the alien's spouse, parent, or child who is a U.S. citizen or LPR (i.e., the hardship cannot be to the alien).

There are special rules for battered alien spouses and children.<sup>141</sup> Specifically, the Attorney General may cancel the removal of a battered alien spouse or child who is inadmissible or deportable and adjust the alien's status to LPR if the alien

- has been physically present in the United States for a continuous period of at least three years immediately preceding the date of such application;<sup>142</sup>
- has been a person of good moral character;<sup>143</sup>
- is not inadmissible on criminal or security grounds, or deportable for marriage fraud, criminal offenses, false documents, or security grounds; and has not been convicted of an aggravated felony; and
- establishes that the removal would result in *extreme hardship* to the alien, the alien's child, or the alien's parent.

Extreme hardship is evaluated on an individual basis, taking into account the particular facts and circumstances of each case. To establish extreme hardship, an applicant must demonstrate that deportation would result in a degree of hardship beyond that typically associated with deportation. Under regulation, applicants are encouraged to cite and document all applicable factors in their applications for cancellation of removal, as the presence or absence of any one factor may not be determinative in evaluating extreme hardship. Adjudicators should weigh all relevant factors presented and consider them in light of the totality of the circumstances.<sup>144</sup>

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<sup>141</sup> To qualify for cancellation of removal as a battered spouse or child, the alien must establish that he/she:

- has been battered or subjected to extreme cruelty by a spouse or parent who is or was a United States citizen (or is the parent of a child of a United States citizen and the child has been battered or subjected to extreme cruelty by such citizen parent);
- has been battered or subjected to extreme cruelty by a spouse or parent who is or was a lawful permanent resident (or is the parent of a child of an alien who is or was a lawful permanent resident and the child has been battered or subjected to extreme cruelty by such permanent resident parent); or
- has been battered or subjected to extreme cruelty by a United States citizen or lawful permanent resident whom the alien intended to marry, but whose marriage is not legitimate because of that United States citizen's or lawful permanent resident's bigamy. (INA §240A(b)(2)(A)(i); 8 U.S.C. §1229b(b)(2)(A)(i))

The special provisions related to battered aliens were enacted as part of the Violence Against Women Act of 1994 (VAWA; P.L. 103-322) and the Violence Against Women Act of 2000 (P.L. 106-386). For more on the immigration provisions in VAWA, see CRS Report R42477, *Immigration Provisions of the Violence Against Women Act (VAWA)*, by William A. Kandel.

<sup>142</sup> The alien is not considered to have failed to maintain continuous physical presence by reason of an absence if the alien can demonstrate a connection between the absence and the battery or extreme cruelty. (INA §240A(b)(2)(B); 8 U.S.C. §1229b(b)(2)(B)).

<sup>143</sup> The Attorney General may waive the good moral character requirement if the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty. (INA §240A(b)(2)(C); 8 U.S.C. §1229b(b)(2)(C)).

<sup>144</sup> 8 C.F.R. §1240.58.

The Nicaraguan Adjustment and Central American Relief Act (NACARA) created a special cancellation of removal provision for certain Central Americans and Eastern Europeans.<sup>145</sup> This provision generally mirrors the suspension of deportation relief that was available before the enactment of IIRIRA in 1996. Reportedly, USCIS believes that nearly all qualifying NACARA applications have been adjudicated.<sup>146</sup>

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<sup>145</sup> P.L. 105-100 as amended by P.L. 105-139, signed into law on December 2, 1997.

<sup>146</sup> Gordon, Charles, et al., *Immigration Law and Procedure* §64.04[7][a]. For more on the special cancellation of removal provisions for NACARA beneficiaries, see CRS Report 98-3, *The Nicaraguan Adjustment and Central American Relief Act: Hardship Relief and Long-Term Illegal Aliens*, by Larry M. Eig; and CRS Report 97-810, *Central American Asylum Seekers Impact of 1996 Immigration Law*, by Ruth Ellen Wasem (available from the author).

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