



**Homeland  
Security**

January 31, 2022

The Honorable Andy Biggs  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Biggs:

Thank you for your May 19, 2021, letter to the Department of Homeland Security (DHS). Secretary Mayorkas asked that I respond on his behalf, and I apologize for the delay in responding.

Noncitizens who are unlawfully present in the United States may be processed for removal from the United States in accordance with U.S. immigration law. U.S. Customs and Border Protection (CBP) is responsible for the inspection and processing of noncitizens who arrive at ports of entry or are encountered between ports of entry. CBP is authorized to apprehend a noncitizen who has entered the United States without inspection between the ports of entry. In certain circumstances, CBP may process a noncitizen for removal pursuant to section 235 of the Immigration and Nationality Act (INA), also known as expedited removal. CBP may also issue a charging document that places the noncitizen in removal proceedings before the Executive Office for Immigration Review within the Department of Justice (DOJ) under section 240 of the INA. Once a noncitizen undergoes processing in CBP custody, CBP typically transfers that noncitizen to U.S. Immigration and Customs Enforcement (ICE) for detention, as appropriate.<sup>1</sup>

ICE prioritizes its limited enforcement resources on noncitizens who are determined to pose a threat to national security, border security, or public safety. Upon arrest by ICE, a noncitizen may be placed in immigration proceedings with the issuance of a charging document. If the noncitizen has previously been ordered removed or has been convicted of an aggravated felony under the INA, he or she may be removed without being placed in removal proceedings under section 240 of the INA. Such noncitizens, however, may pursue protection from removal if they have a fear of returning to their home country.

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<sup>1</sup> CBP may transfer single adults and family units to ICE Enforcement and Removal Operations custody. Unaccompanied noncitizen children are transferred to the care and custody of the Department of Health and Human Services Office of Refugee Resettlement in accordance with the Trafficking Victims Protection Reauthorization Act of 2008 and the Homeland Security Act of 2002.

As part of removal proceedings in immigration court, the immigration judge (IJ) makes a determination of the noncitizen's removability as well as eligibility for relief or protection from removal. If the IJ determines that the noncitizen is subject to removal from the United States and ineligible for relief, the IJ will issue a final order of removal. The noncitizen then has the right to appeal and may exercise that right by filing a notice to appeal with the Board of Immigration Appeals (BIA) within DOJ. If the BIA dismisses the noncitizen's appeal of the IJ decision or otherwise affirms the IJ's order of removal, the order of removal becomes administratively final. The noncitizen may then file a Petition for Review of the final order of removal, along with a stay of removal, with the federal court of appeals having jurisdiction over the matter. If the federal court of appeals grants the stay of removal, DHS will not execute the final order of removal until the court of appeals dismisses the Petition for Review or lifts the stay of removal. Additionally, removal from the United States does not prevent the noncitizen from filing a Motion to Reopen.

Earlier this year, when encounters were consistently high, operational capacity strained, and COVID-19 acute, the U.S. Border Patrol (USBP) began issuing Notices to Report (NTRs), a significantly faster mechanism for processing noncitizens, particularly when used for family units. NTRs were used for certain noncitizens following initial processing and collection of biometric and biographic information. The use of this processing pathway enabled USBP to relieve overcrowding in congregate settings, thus better protecting both the workforce and noncitizens in its custody. Importantly, use of an NTR decreased processing times significantly compared with processing families for a Notice to Appear (NTA), thus ensuring that families were more expeditiously moved out of CBP custody. Those released with NTRs were directed to report to ICE for further processing, including for an NTA, as appropriate.

USBP has since ceased the use of NTRs. When noncitizens are processed for release from USBP facilities, USBP prioritizes resources to issue noncitizens NTAs immediately. NTAs formally initiate immigration proceedings, and it is USBP's goal to maximize NTA issuance from USBP facilities and eliminate the need for use of alternative processing pathways in the future.

To deal with situations in which capacity constraints or conditions in custody warrant more expeditious processing, an alternative pathway has been developed: the use of Parole+ Alternatives to Detention (ATD). Parole+ ATD is a rigorous and effective enforcement process that includes accountability measures to require noncitizens to report to ICE for issuance of an NTA and continue the formal immigration removal process.

From March 21 through December 10, 2021, CBP processed 148,366 individuals with an alternate processing document at the Southwest Border. Of those, 94,039, or 63.38 percent, were processed with an NTR, while 54,327, or 36.62 percent, were processing using Parole+ ATD. All individuals who did not receive an NTA at the border are required to report to an ICE field office to receive an NTA and begin the next step in their immigration proceedings. Of these 148,366 individuals, as of December 10, 2021, 108,069 have complied with or are within the check-in window.

If ICE officers determine that an individual has provided incorrect information or is otherwise not adhering to their terms of release, ICE may take further action, to include enforcement action in cases where it is appropriate, based upon current enforcement priorities and the specific facts and circumstances involving the noncitizen.

Thank you again for your letter; enclosed are responses to the questions posed in your letter. Should you wish to discuss this matter further, please do not hesitate to contact the Office of Legislative Affairs at (202) 447-5890.

Sincerely,

A handwritten signature in dark ink, appearing to read "Alice Lugo". The signature is fluid and cursive, with the first name "Alice" written in a larger, more prominent script than the last name "Lugo".

Alice Lugo  
Assistant Secretary for Legislative Affairs

Enclosure