

INA: ACT 239 - INITIATION OF REMOVAL PROCEEDINGS

Sec. 239. 1(a) Notice to Appear.-

(1) In general.-In removal proceedings under section 240, written notice (in this section referred to as a "notice to appear") shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying the following:

(A) The nature of the proceedings against the alien.

(B) The legal authority under which the proceedings are conducted.

(C) The acts or conduct alleged to be in violation of law.

(D) The charges against the alien and the statutory provisions alleged to have been violated.

(E) The alien may be represented by counsel and the alien will be provided (i) a period of time to secure counsel under subsection (b)(1) and (ii) a current list of counsel prepared under subsection (b)(2).

(F) (i) The requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting proceedings under section 240.

(ii) The requirement that the alien must provide the Attorney General immediately with a written record of any change of the alien's address or telephone number.

(iii) The consequences under section 240(b)(5) of failure to provide address and telephone information pursuant to this subparagraph.

(G) (i) The time and place at which the proceedings will be held.

(ii) The consequences under section 240(b)(5) of the failure, except under exceptional circumstances, to appear at such proceedings.

(2) Notice of change in time or place of proceedings.-

(A) In general.-In removal proceedings under section 240, in the case of any change or postponement in the time and place of such proceedings, subject to subparagraph (B) a written notice shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying-

(i) the new time or place of the proceedings, and

(ii) the consequences under section 240(b)(5) of failing, except under exceptional circumstances, to attend such proceedings.

(B) Exception.-In the case of an alien not in detention, a written notice shall not be required under this paragraph if the alien has failed to provide the address required under paragraph (1)(F).

(3) Central address files.-The Attorney General shall create a system to record and preserve on a timely basis notices of addresses and telephone numbers (and changes) provided under paragraph (1)(F).

(b) Securing of Counsel.-

(1) In general.-In order that an alien be permitted the opportunity to secure counsel before the first hearing date in proceedings under section 240, the hearing date shall not be scheduled earlier than 10 days after the service of the notice to appear, unless the alien requests in writing an earlier hearing date.

(2) Current lists of counsel.-The Attorney General shall provide for lists (updated not less often than quarterly) of persons who have indicated their availability to represent pro bono aliens in proceedings under section 240. Such lists shall be provided under subsection (a)(1)(E) and otherwise made generally available.

(3) Rule of construction.-Nothing in this subsection may be construed to prevent the Attorney General from proceeding against an alien pursuant to section 240 if the time period described in paragraph (1) has elapsed and the alien has failed to secure counsel.

(c) Service by Mail.-Service by mail under this section shall be sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with subsection (a)(1)(F).

(d) Prompt Initiation of Removal.- (1) In the case of an alien who is convicted of an offense which makes the alien deportable, the Attorney General shall begin any removal proceeding as expeditiously as possible after the date of the conviction.

(2) Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(e) 2 Certification of Compliance With Restrictions on Disclosure-

(1) IN GENERAL- In cases where an enforcement action leading to a removal proceeding was taken against an alien at any of the locations specified in paragraph (2), the Notice to Appear shall include a statement that the provisions of section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367) have been complied with.

(2) LOCATIONS- The locations specified in this paragraph are as follows:

(A) At a domestic violence shelter, a rape crisis center, supervised visitation center, family justice center, a victim services, or victim services provider, or a community-based organization.

(B) At a courthouse (or in connection with that appearance of the alien at a courthouse) if the alien is appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, trafficking, or stalking in which the alien has been battered or subject to extreme cruelty or if the alien is described in subparagraph (T) or (U) 3 of section 101(a)(15).

FOOTNOTES FOR SECTION 239

INA: ACT 239 FN 1

FN 1 Added by § 304 of IIRIRA. Former section 239 was redesignated as section 234 and moved accordingly by § 304(a)(1) of IIRIRA.

INA: ACT 239 FN 2

FN 2 Section 825(c)(1) of Public Law 109-162, dated January 5, 2006, amended section 239 of the Immigration and Nationality Act by adding paragraph (e).

Effective Date: The amendment made by section 825(c)(1) of Public Law 109-162 shall take effect on the date that is 30 days after the date of the enactment of this Act which is February 4, 2006, and shall apply to apprehensions occurring on or after such date.

INA: ACT 239 FN 3

FN 3 Section 6(d) of Public Law 109-271, dated August 12, 2006, amended section 239(e)(2)(B) of the Act.