

The Impact of the “Securing the Border” Interim Final Rule on Migrant Encounters and Processing

September 6, 2024

In FY2023, enforcement encounters by the Department of Homeland Security’s (DHS’s) Customs and Border Protection (CBP) at the Southwest border reached their highest annual level recorded ([2.5 million migrant encounters](#)) since the U.S. Border Patrol (USBP) was established in 1924. Monthly encounters increased at the end of calendar year 2023, reaching 302,000 in December. In the first 10 months of FY2024, CBP recorded 1.9 million encounters. The majority (1.4 million) were apprehensions between ports of entry by USBP.

In response to rising encounters, President Biden signed a [proclamation](#) on June 3, 2024, that [suspends and limits the entry of certain migrants](#) at the southern border. DHS and the Department of Justice (DOJ) issued a joint [interim final rule \(IFR\)](#) that restricts asylum eligibility for migrants subject to the proclamation’s suspension of entry.

Immigration law authorizes CBP officers to charge aliens with immigration violations and process them for removal (deportation). Generally, CBP chooses one of two removal pathways.

Under the [formal removal](#) process, CBP issues a migrant a notice to appear (NTA) charging document and files it in an immigration court (within DOJ’s Executive Office for Immigration Review). During removal proceedings, an immigration judge determines whether the individual is subject to removal from the United States. The individual [may apply for relief or protection from removal](#), including asylum, withholding of removal, and protection under the Convention Against Torture (CAT). Unless they are subject to [mandatory detention](#), most migrants issued NTAs are released from DHS custody to await proceedings.

The [backlog of pending cases](#) in immigration court has been exacerbated by migrant encounters at the Southwest border resulting in NTA filings. In FY2024 Q2, the backlog reached [3.2 million cases](#), with [716 immigration judges](#) on staff. As a result, some individuals wait years to have their proceedings adjudicated.

Certain recently arrived aliens, typically those apprehended by CBP at or near a U.S. border, may be subject to [expedited removal](#), which allows DHS to remove individuals without a hearing. Those who

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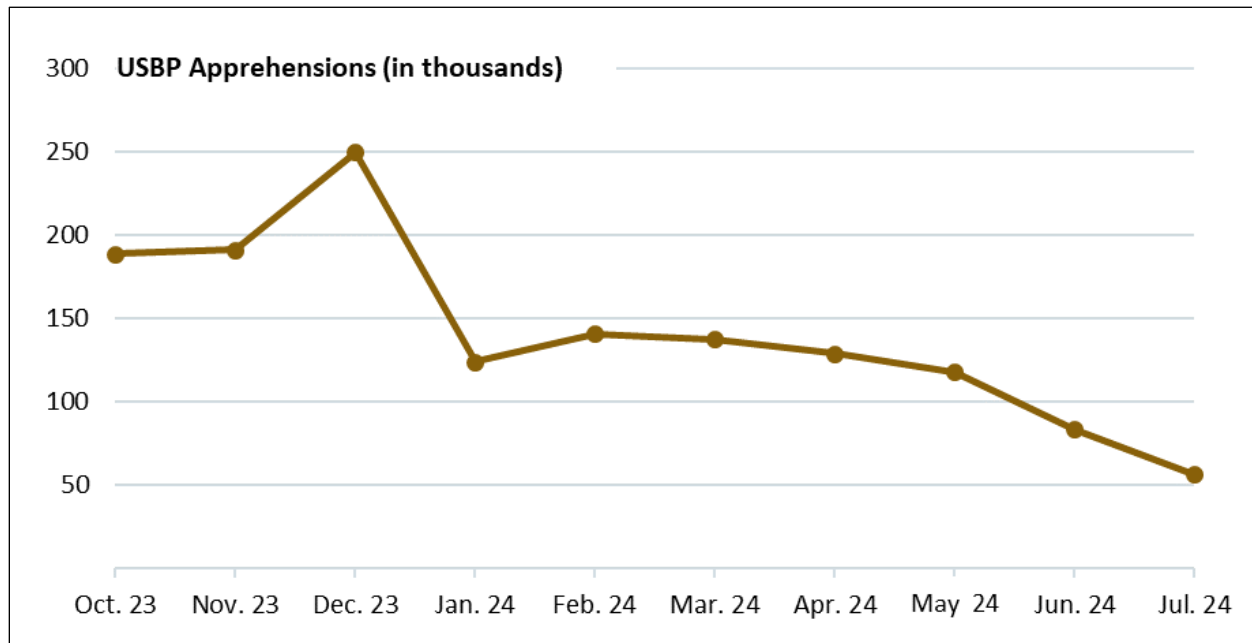
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express a fear of persecution or torture if returned to their country of origin or an intent to apply for asylum may undergo a [credible fear screening](#) to determine whether they may qualify for asylum or other protection. Typically, those who meet the threshold for a credible fear of persecution or torture are referred for formal removal proceedings. Migrants processed for expedited removal are generally held in DHS custody.

The June 2024 IFR limits asylum eligibility for migrants encountered at the Southwest border during “[emergency border circumstances](#).” Unlike previous practices, under the IFR CBP officers will not ask an individual processed for expedited removal whether they fear returning to their country. If an individual subject to the asylum limitation affirmatively expresses a fear or an intention to apply for asylum or protection, CBP refers the individual for a credible fear screening with an asylum officer. The asylum officer will make a negative credible fear determination with respect to asylum, absent “exceptionally compelling circumstances,” and will consider instead whether the individual can show a “reasonable probability” of persecution or torture to determine potential eligibility for withholding of removal and CAT protection (a higher standard than that used previously).

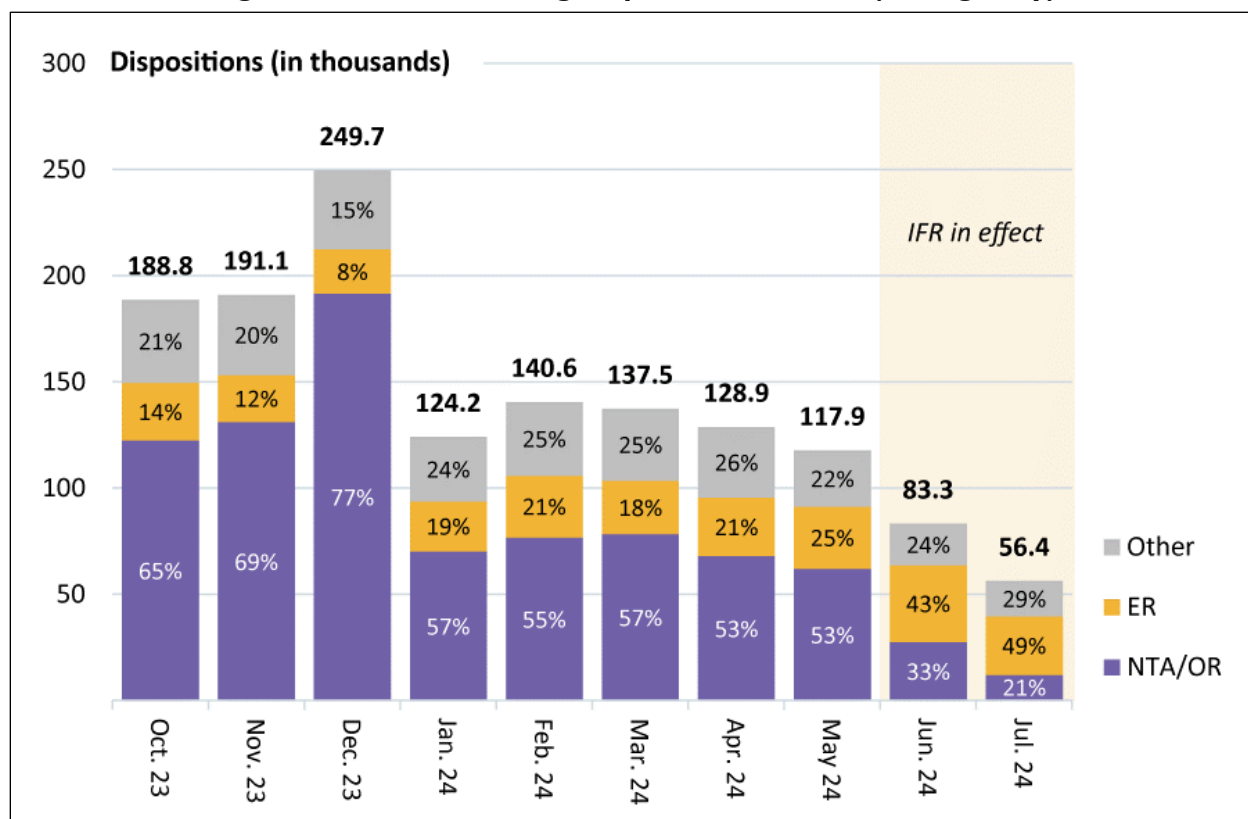
As the [IFR explains](#), high numbers of encounters have [challenged the agency’s ability](#) to process migrants through expedited removal due to limited holding space and asylum officers. In recent fiscal years, due to resource constraints, DHS has processed the majority of migrants encountered at the Southwest border—including those eligible for expedited removal—for formal removal. These individuals may be released from custody relatively quickly, but formal removal does not allow DHS and DOJ to “[deliver timely decisions and consequences](#)” to those who lack a lawful basis to remain in the country. DHS expects the IFR will increase its capacity to process individuals for expedited removal. DOJ and DHS [stated that](#) the IFR will enable them “to quickly return those without a lawful basis to stay in the United States and thereby free up the asylum system for those with legitimate claims.”

The figures below examine trends in migrant apprehensions at the Southwest border since the IFR’s implementation. They focus on USBP apprehensions and removal pathways (*dispositions*) including formal and expedited removal. Prior to the proclamation and IFR, monthly USBP apprehensions ranged from a high of 249,741 in December to a low of 117,901 in May. Since then, monthly apprehensions declined 52% from May to July (**Figure 1**).

Figure 1. USBP Southwest Border Apprehensions, FY2024 (through July)

Source: CBP, Custody and Transfer Statistics, "USBP Monthly Southwest Border Encounters by Processing Disposition," August 16, 2024.

The dispositions under which migrants were processed also changed. For most of FY2024, most apprehended migrants were processed for formal removal with an NTA and released from DHS custody on their own recognizance (NTA/OR). From October to May, the number of those processed with an NTA/OR reached 77% of all USBP encounters in December before declining to 53% in May. During that period, use of expedited removal reached its lowest point in December (8%), before increasing to 25% in May. Since June, expedited removal has supplanted NTA/OR as the most common disposition (**Figure 2**).

Figure 2. USBP Processing Dispositions, FY2024 (through July)

Source: CBP, Custody and Transfer Statistics, “USBP Monthly Southwest Border Encounters by Processing Disposition,” August 16, 2024.

Notes: “Other” includes warrant of arrest/Notice to Appear (detained migrants), reinstatement of prior order of removal, voluntary return, paroles, and “other.”

These data indicate that since the proclamation and IFR went into effect, there has been a decrease in USBP encounters at the Southwest border. They also show a reversal from CBP most frequently processing migrants for formal removal to most frequently processing them for expedited removal, a change that may be attributed to the IFR’s policy changes.

It is difficult to disaggregate the effect of the proclamation and IFR, specifically, on the overall number of encounters, or predict how they may affect future flows. Other factors may include seasonal changes in migration, [immigration enforcement in Mexico](#), or migrants [choosing more remote routes to evade detection](#).

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