

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

Updated October 31, 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 recorded annual level ([2.5 million migrant encounters](#)). In FY2024, encounters decreased to 2.1 million. The majority (1.5 million) were apprehensions along the border between ports of entry (POEs) by CBP’s U.S. Border Patrol (USBP).

In response to high levels of encounters, President Biden signed a [proclamation](#) that “[suspended and limited](#)” the entry of certain migrants at the Southwest border, effective June 5, 2024. DHS and the Department of Justice (DOJ) issued a joint [interim final rule \(IFR\)](#) that restricted asylum eligibility for migrants subject to the proclamation’s suspension of entry, effective the same day. On September 27, the President updated the [proclamation](#) and DHS and DOJ issued a [final rule](#) amending the IFR, effective October 1, 2024.

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 Q3, the backlog reached [3.5 million cases](#). With [725 immigration judges](#) on staff, some individuals wait years to have their proceedings completed.

Under [expedited removal \(ER\)](#), DHS may remove individuals, typically recently arrived aliens apprehended by CBP at or near a U.S. border, without a hearing. Those who 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](#)

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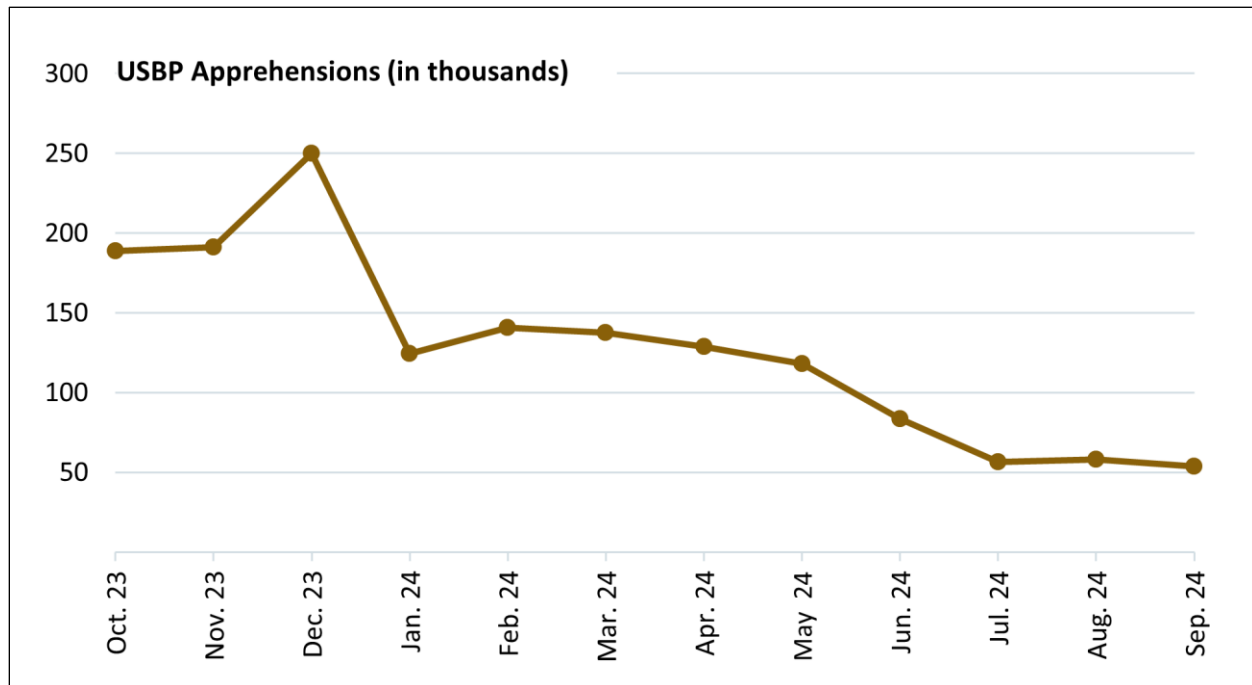
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fear screening to determine whether they may qualify for asylum or other protection. Typically, those who meet the threshold for a credible fear of persecution or torture are referred for formal removal proceedings. Migrants processed for ER are generally held in DHS custody.

The final rule limits asylum eligibility for migrants encountered at the Southwest border during “*emergency border circumstances*.” Unlike previous practices, CBP officers will no longer ask an individual processed for ER 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 (a higher standard than that used previously) to determine potential eligibility for withholding of removal and CAT protection.

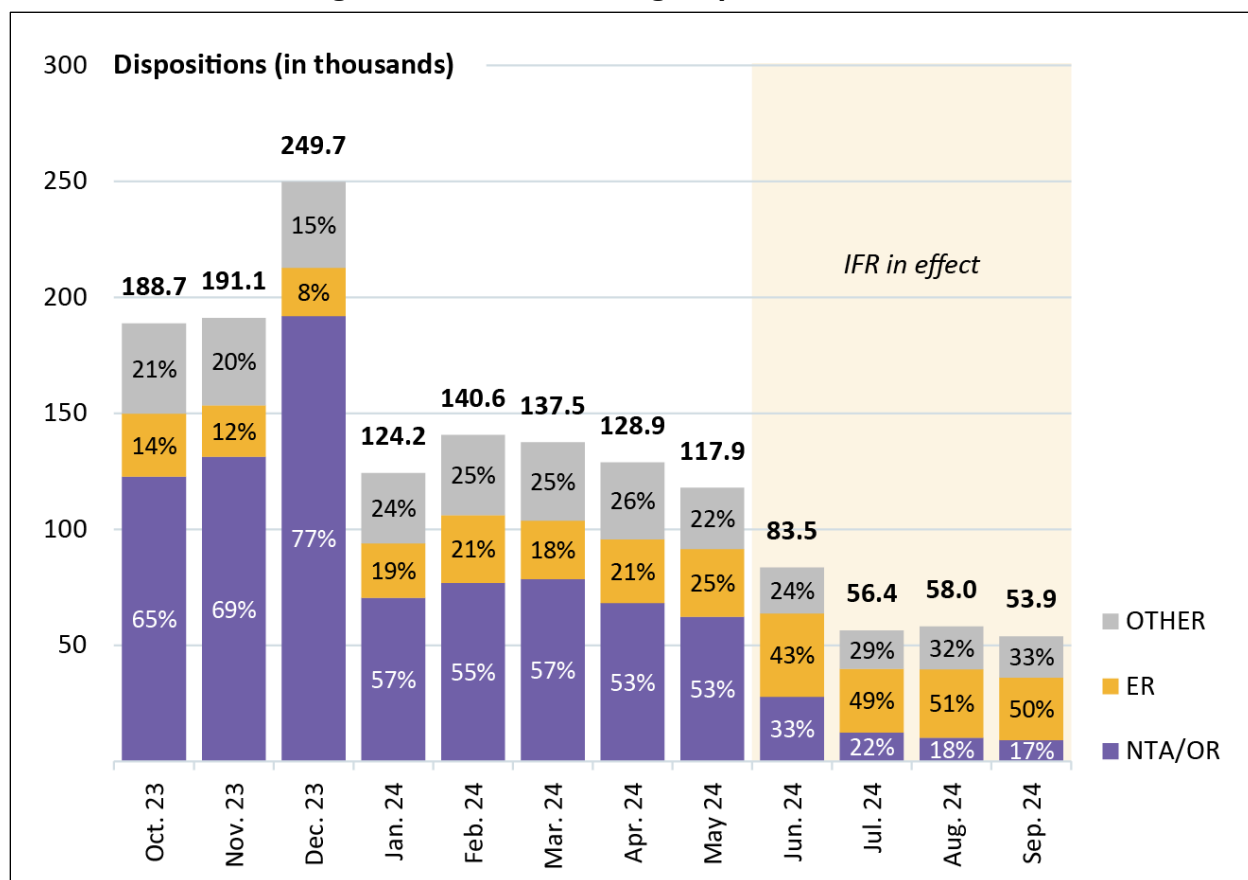
As the *IFR explained*, high numbers of encounters *challenged the agency’s ability* to process migrants through ER due to the limited holding space and number of asylum officers. In recent fiscal years, due to resource constraints, DHS processed the majority of migrants encountered at the Southwest border—including those eligible for ER—for formal removal. While these individuals may be released from custody relatively quickly, 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 expected the IFR would reduce the number of migrants crossing between POEs and increase its capacity to process individuals for ER. At the end of FY2024, *CBP reported* a “continued, meaningful decrease in unlawful border crossings” since the IFR went into effect.

The figures below present trends in migrant apprehensions at the Southwest border since the IFR’s implementation. They reflect USBP apprehensions and removal pathways (*dispositions*) including formal and ER. Prior to the June proclamation and IFR, monthly USBP apprehensions ranged from a high of 249,740 in December 2023 to a low of 117,905 in May 2024. Following IFR implementation, monthly apprehensions declined 54% between May and *September 2024 (Figure 1)*.

Figure 1. USBP Southwest Border Apprehensions, FY2024

Source: CBP, Custody and Transfer Statistics, "USBP Monthly Southwest Border Encounters by Processing Disposition," October 22, 2024.

The dispositions under which migrants were processed also changed. For much 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 2023 to May 2024, the percentage of all USBP encounters processed with an NTA/OR reached 77% in December before declining to 53% in May. During that period, use of ER reached its lowest point in December (8%), before increasing to 25% in May. Since June, ER has supplanted NTA/OR as the most common disposition (**Figure 2**). In September 2024, the proportion of migrants processed with NTA/OR was approximately one-third of that in May 2024.

Figure 2. USBP Processing Dispositions, FY2024

Source: CBP, Custody and Transfer Statistics, “USBP Monthly Southwest Border Encounters by Processing Disposition,” October 22, 2024.

Notes: “Other” includes warrant of arrest/Notice to Appear (detained migrants), reinstatement of prior order of removal, voluntary return, paroles, and “other.” Percentages may not sum to 100% due to rounding.

These data indicate a decrease in USBP encounters at the Southwest border since the proclamation/IFR went into effect. They also show a reversal from CBP processing migrants mostly through formal removal to mostly through ER, a change that may be attributed to the IFR’s policy changes.

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

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