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Immigration and Customs Enforcement (ICE) and the Non-Detained Docket (NDD)

Background

The Immigration and Nationality Act (INA, Title 8 of the U.S. Code) authorizes and sometimes requires the U.S. Department of Homeland Security (DHS) to detain *aliens* (*foreign nationals*) who are subject to removal from the United States. This authority allows DHS to detain aliens who pose a threat to public safety, ensures that such individuals appear at immigration removal hearings, and permits DHS to remove an individual more effectively after an order of removal has been issued. Detained aliens represent what is known as the *detained docket*. However, DHS has broad discretion to release from custody those aliens who are not subject to mandatory detention or do not pose a threat or flight risk. These individuals represent the *non-detained docket* (NDD).

Supervision of aliens on the detained and the non-detained dockets is the responsibility of Enforcement and Removal Operations (ERO) within DHS's Immigration and Customs Enforcement (ICE). ERO may arrest any alien who is believed to have violated U.S. immigration laws and remove any alien who has received a final removal order. The INA generally requires detention for applicants for admission who are removable, aliens removable on specified criminal and terrorist-related grounds, and those with final removal orders.

The INA also grants DHS discretion to either detain or release from custody all other aliens in pending removal proceedings. After ICE arrests an alien not subject to mandatory detention, an immigration officer makes an *initial custody determination* and may make further determinations during the course of formal removal proceedings, based on standards and criteria promulgated by the U.S. Department of Justice (DOJ).

Aliens may be detained in an ICE facility or released on bond or conditional parole; these individuals become part of the NDD. In any case, aliens must attend all subsequent proceedings before an immigration judge (IJ) within DOJ's Executive Office for Immigration Review (EOIR).

Detained aliens may request a *review of the custody determination* during a bond hearing before an IJ, unless they are subject to detention without bond by federal law.

ICE's detention capacity limits the number of detainees that can be held at any given time. ICE currently oversees detainees in over 200 ICE-owned, private, state, and local facilities that house from fewer than 5 aliens to more than 2,000. ICE data indicate that 66,978 individuals were detained as of April 9, 2026. Between FY1996 and FY2025, the average annual total of detained individuals ranged from about 9,000 to 60,000. Currently, ICE possesses detention bedspace capacity for roughly 70,000

individuals and has considered plans to expand this capacity to over 90,000 in FY2026.

In contrast, the NDD refers to aliens who are subject to removal but are not detained. The docket includes individuals at any stage in the removal process. Individuals on the NDD remain under ICE supervision to help ensure that they regularly check in, comply with release conditions, attend court hearings, and comply with removal if so ordered.

The NDD Population

Generally, the NDD population consists of aliens that

- have been released at ICE's discretion following an initial or subsequent custody determination (as discussed previously);
- are currently incarcerated in federal, state, and local facilities while serving sentences for criminal offenses;
- have final removal orders but were granted temporary protection through withholding of removal or the Convention Against Torture (CAT);
- have final removal orders and are in the process of being repatriated;
- have final removal orders but cannot be repatriated because their origin countries do not cooperate with the United States;
- have final removal orders but absconded into the United States as fugitives; and
- unbeknownst to ICE, have voluntarily departed the United States or died and remain on the NDD erroneously.

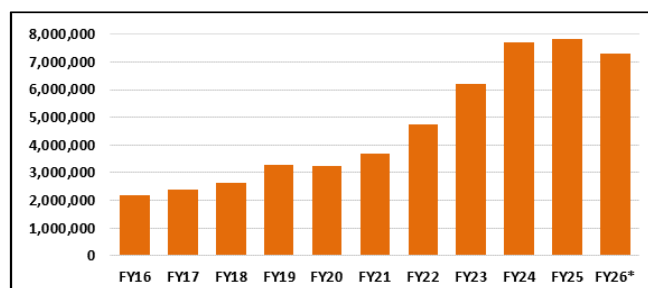
ICE's most recently reported NDD population size of 7.3 million reflects its count of non-detained aliens as of February 26, 2026 (**Figure 1**). All such individuals have been processed by ICE, including an estimated 1.6 million with final orders of removal. The NDD count relies on a cumulative list of removable aliens that is continuously updated; thus, it excludes those with a confirmed departure or death. Some aliens have been on the NDD for decades; others have been placed on it more recently. A fraction of NDD individuals are enrolled in ICE's Alternatives to Detention (ATD) program, which involves more intensive supervision than other NDD individuals who, in addition to attending all court hearings, typically must check in once a year with ICE. Currently, 180,000 individuals are on ATD.

NDD Trends

The NDD has more than tripled since FY2016 (**Figure 1**). Recent NDD growth reflects high numbers of encounters (apprehensions) of aliens by the U.S. Border Patrol (USBP), part of DHS's Customs and Border Protection (CBP). From FY2016 through FY2020, annual USBP

encounters at the Southwest border averaged about 470,000, and the NDD grew during that period from 2.2 million to 3.3 million unauthorized aliens. From FY2021 through FY2024, average annual encounters more than quadrupled to 1.9 million, boosting the NDD from 3.7 million to 7.7 million individuals. Since FY2025 (as of March 2026), USBP encounters have declined substantially. Increased ICE enforcement actions and removals that have prompted unauthorized aliens to *self-deport* have also reduced the NDD. Reportedly, about 72,000 aliens as of March 2026 have used a CBP incentive-based program to facilitate their voluntary departure and many others have left of their own accord.

Figure 1. Estimated NDD Population, FY2016-FY2026*



Source: FY2016: DHS OIG-17-51; FY2017-FY2019: ICE ERO Annual Report, FY2019; FY2020-FY2023: ICE Annual Report, FY2023; FY2024: ICE Annual Report, FY2024; FY2025-FY2026: ICE Office of Legislative Affairs.

Notes: FY2026* figure as of February 26, 2026.

How the NDD Fluctuates

The NDD increases with alien apprehensions and arrests and decreases when aliens are removed from the United States, or granted immigration relief (e.g., asylum) following immigration court proceedings. When border encounters are high, immigration officers may use their discretion to supervise individuals on the NDD instead of in limited detention space. In addition, ICE cannot remove aliens with final removal orders if their countries of citizenship restrict returns of their nationals; this lengthens the time they remain on the NDD. Geopolitical events, war and civil conflict, and noncooperation by countries on issuing travel documents or accepting their nationals can limit the ability of the United States to remove individuals.

The NDD decreases when ICE removes aliens from the United States, when removable individuals depart the United States by choice, or when ICE re-detains aliens if, for example, they violate their terms of release. The NDD also decreases if the alien dies. The NDD fluctuates due to the net effects of these combined circumstances.

Policy Developments

A January 2025 Executive Order (EO), *Securing Our Borders*, (Section 5) directed DHS to “take all appropriate actions to detain, to the fullest extent permitted by law, aliens apprehended for violations of immigration law until their successful removal from the United States.” In accordance with the EO, in February 2025 ICE issued a policy directive to ERO officers to consider for detention various groups of aliens in two broad categories.

The first group includes aliens previously released by CBP who have not yet filed for asylum, including (1) paroled arriving aliens; (2) aliens issued a CBP “Notice to Report” (NTR); and (3) aliens processed for “Parole + ATD” or “Parole with Conditions.” These three processes were previously developed by CBP during record-high levels of Southwest border apprehensions during the COVID-19 pandemic. In order to reduce detainee time in custody to lessen the risk of transmission of the virus, CBP released certain aliens from custody. Instead of receiving a charging document to appear in immigration court, these aliens were issued either an NTR (requiring them to report to an ICE office within 60 days) or “Parole + ATD.”

The second group consists of the non-detained generally. Officers are instructed to “carefully review for removal all cases reporting on the non-detained docket” when such aliens report to an ERO Field Office for a check-in. This group includes aliens granted withholding of removal and CAT protection. Also targeted are aliens previously released due to “no significant likelihood of removal in the reasonably foreseeable future,” following the Supreme Court’s 2001 case, *Zadvydas v. Davis*, which generally limits detention to a maximum of six months after a removal order is final. These aliens may be subject to *third country removal* (not their country of origin, citizenship, or last habitual residence).

ICE’s ability to effectuate removals and thereby reduce the NDD depends on diplomatic relations with countries whose nationals comprise large portions of the NDD. For example, until recently, the United States had no diplomatic relations with Venezuela, hindering the removal and repatriation of potentially hundreds of thousands of Venezuelan nationals. Similar circumstances exist with other prominent migrant-sending countries such as Cuba, Vietnam, Nicaragua, and China. The Trump Administration has been negotiating with many third countries to accept deported aliens who cannot return to their home countries.

Considerations for Congress

More generally, issues for Congress may include

- ICE’s ability to monitor and ultimately remove the NDD population given its considerable size;
- NDD individuals who had previously been granted protection being subject to third country removal and potential violation of due process rights;
- NDD individuals in removal proceedings or with final removal orders who may pose threats to public safety;
- the growing number of aliens with final removal orders who remain on the NDD;
- efficacy and cost tradeoffs of the ATD program compared to conventional detention facilities;
- how ICE enforcement priorities affect the NDD;
- how U.S. diplomatic relationships with other countries affect the NDD; and
- the portion of the NDD with no criminal background recently detained, or at risk of being detained and removed, given ICE’s substantial funding increase from P.L. 119-21.

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