

Discretion and the July 23, 2019 ER Designation

As a matter of discretion, immigration officers should **NOT revisit a determination made prior to July 23, 2019** to place an alien in INA § 240 removal proceedings, even if the alien is amenable to expedited removal under the July 23, 2019 ER Designation.

The exercise of discretion to place an ER-amenable alien into INA § 240 proceedings may also be appropriate in cases presenting mental competency issues, where the alien is known to the officer to be the sole caregiver of a U.S. citizen child(ren) or appears eligible for relief available in INA § 240 removal proceedings, where ICE seeks to charge additional inadmissibility grounds, or where the alien is a crime victim, witness or informant working with law enforcement.

Although Congress limited courts' jurisdiction to review ER orders, when determining whether to process an alien for ER under the July 23, 2019 ER Designation, immigration officers should be mindful of how a court would view the available evidence of physical presence in the United States.

