

# Reinstatement of Removal

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If an alien is found to have reentered the United States illegally after having been previously removed or having left under a grant of voluntary departure under a removal order, the alien may be subject to reinstatement of removal. Reinstatement of removal is a procedure where the Department of Homeland Security (DHS) reviews the previous removal order, and in its discretion, reinstates that prior removal order. Aliens ultimately subject to reinstatement of removal will not have the opportunity to have the reinstatement reviewed by an immigration judge. Where DHS is considering reinstatement of removal, an alien, depending on the facts of his or her situation, may have limited avenues to seek relief from reinstatement of removal.

# Rules and Regulations for Reinstatement of Removal

**Section 241(a)(5) of the Immigration and Nationality Act (INA) provides only that where the Attorney General finds that an alien has committed an illegal reentry into the United States after having previously been removed or been granted and left pursuant to a grant of voluntary departure, the prior order of removal shall be reinstated and is not subject to reopening or review. The statute continues to add that the alien may not apply for any form of relief, and shall be removed pursuant to the reinstated removal order.**

**Regulations found in 8 C.F.R. 241.8 list the three factors that the immigration officer should ascertain in order to establish whether an alien should be subject to reinstatement of removal:**

- 1. Whether the alien has been subject to a prior order of removal;*
- 2. Verification of the alien's identity to confirm whether the alien in question is the alien was subject to a prior order of removal;*
- 3. Whether the alien entered the United States unlawfully.*

## Withholding Only Proceedings

**An alien subject to reinstatement of removal may seek withholding of removal and a claim based upon the Convention Against Torture (CAT) by attempting to demonstrate that he or she would face a high likelihood of**

**torture upon removal. The alien may attest to having a fear of persecution if he or she is returned to home country. In this scenario, the alien will be granted a credible fear interview with an asylum officer. See 8 C.F.R. §§ 208.31, 241.8(d).**

**If the asylum officer determines that the alien does not have a credible fear of persecution or torture, the alien may obtain review from an immigration judge. However, it is important to note that asylum may be barred if the alien is subject to a mandatory bar to applying or being granted asylum. The alien may lodge a constitutional or legal challenge against the original removal proceeding.**

# **Case Law**

*Delgado v. Mukasey*, **516 F.3d 65, 67 (2d Cir. 2008)**

*Ponta-Garcia v. Att’y Gen. of the U.S.*, **557 F.3d 158, 161-64 (3d Cir. 2009)**

*Herrera-Molina v. Holder*, **597 F.3d 128, 138-40 (2d Cir. 2010)**

*Debato v. Att’y Gen. of the U.S.*, **505 F.3d 231 (3d Cir. 2007)**

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