



Expanded Expedited Removal

Summary

On July 23, the Department of Homeland Security (DHS) published a [Notice](#) in the Federal Register announcing a significant expansion of [expedited removal](#). Under the expanded policy, most undocumented persons who cannot prove they have resided in the United States for more than two years potentially will be subject to expedited removal. The expedited removal guidelines do not apply to visa overstayers, only to those who have not been admitted or paroled into the United States. The new expanded expedited removal guidelines take effect immediately, but immigration advocates have stated they plan to challenge the expansion in court.

Under [existing law](#), the DHS secretary can expand expedited removal without formal notice and comment rulemaking. However, as a matter of discretion, DHS is accepting public comments on the Notice.

Previously, 2004 regulations limited eligibility for expedited removal to noncitizens entering the U.S without authorization who were apprehended (1) within two weeks of their arrival in the U.S. and (2) within 100 miles of a U.S. land border. The new guidelines set forth in the Notice expand the temporal restriction to two years and remove the geographic restriction.

Individuals who are subject to expedited removal but claim a fear of persecution or express an intention to apply for asylum will receive a credible fear interview before an asylum officer. If they are determined to have a credible fear of persecution, they are removed from the expedited removal process.

What is expedited removal?

Created in 1996 by the Illegal Immigration Reform and Immigrant Responsibility Act, [expedited removal](#) is a procedure that allows U.S. Customs and Border Protection (CBP) officials to rapidly deport noncitizens who are undocumented or who have committed misrepresentation or fraud. Under expedited removal processes, certain noncitizens are deported in as little as a single day without an immigration court hearing or other appearance before a judge.

Background on the new guidance

President Donald Trump issued an executive order entitled "[Border Security and Immigration Enforcement Improvements](#)" upon taking office in January 2017, calling on the DHS secretary to use his or her discretion to take appropriate action to expand the use of expedited removal. In April 2019, Politico reported that [DHS draft regulations](#) to expand expedited removal were under consideration, consistent with the scope of the 1996 statute that created the process of expedited removal. On July 23, DHS issued the Notice announcing the expanded expedited removal guidelines.

DHS claims that expanding expedited removal "will strengthen national security, diminish the number of illegal entries, and otherwise ensure the prompt removal of aliens apprehended in

the United States,” reducing incentives for unlawful entry. DHS further contends that the policy will address “the ongoing crisis at the southern border” and help reduce backlogs in the immigration courts.

Impact of expanded expedited removal

Hundreds of thousands more people will face expedited removal. The regulation potentially exposes more than [328,000](#) additional people to expedited removal, limiting their access to immigration hearings and to due process generally. The absence of an immigration court hearing with limited time to obtain counsel prior to deportation is almost certain to lead to people being erroneously deported.

Previously the existence of temporal and geographic restrictions on expedited removal limited the likelihood of improper deportations. Removing these restrictions will inevitably have an adverse impact on those additional people who now could face erroneous removal.

Erroneous deportations will occur. In accordance with the Notice, there almost certainly will be instances of people with valid asylum claims or other removal defenses being deported without being able to make their case to an immigration judge. In addition, this dramatic expansion of expedited removal is almost certain to sweep up U.S. citizens, lawful permanent residents (LPRs), and individuals on visas who may face accidental deportation with only limited avenues to challenge them.

While people claiming citizenship or another legal status are not subject to expedited removal under the new guidelines — when the government contests these claims, such people are placed in removal proceedings before an immigration judge — the speed of expedited removal and absence of due process make it more likely that such persons may be erroneously removed. As before, those [falsely claiming citizenship](#) are rendered inadmissible and subject to removal.

Civil liberties will be infringed. The Notice purports to place the burden of “affirmatively show[ing]” that they have been physically present in the United States continuously for two years on persons determined to be inadmissible. Although it is not entirely clear how DHS will implement this policy, this raises the possibility that those likely to be questioned by immigration officers — whether citizen or immigrant, documented or undocumented — will be effectively required to carry documentation establishing their citizenship and/or legal presence or demonstrating a two-year period of residency in the United States. The specter of having federal authorities request immigration papers and/or identification to travel in the interior of the United States is an unprecedented expansion of federal authority and a substantial infringement on civil liberties.

The regime set up by the new expedited removal guideline is likely to sow fear in immigrant communities and to increase instances of racial profiling and discrimination against those groups likely to be asked to show their papers.