

A Primer on Expedited Removal

Expedited removal is a process by which low-level immigration officers can summarily remove certain noncitizens from the United States without a hearing before an immigration judge. Undocumented immigrants placed in expedited removal proceedings are entitled to access the asylum system if they express fear of persecution, torture, or of returning to their home country.

Created in 1996 as part of the Illegal Immigration Reform and Immigrant Responsibility Act, the expedited removal statute applies to noncitizens who arrive at a port of entry¹ and to some noncitizens who enter without having been admitted or paroled (those who “enter without inspection”) and who have not been continuously present in the United States for at least two years. Expedited removal is only applicable to people in those categories who either lack the proper entry documents or who seek or have sought entry through fraud or misrepresentation.² However, the use of expedited removal has varied since its adoption.

This fact sheet explains:

- What is expedited removal
- How expedited removal is currently being applied
- The use of expedited removal over time
- Concerns about expedited removal

How Is Expedited Removal Currently Applied?

Initially, the application of expedited removal was limited to noncitizens who arrived at a port of entry.³ In 2002, the government expanded the reach of expedited removal to apply to noncitizens who entered by sea without inspection.⁴ Two years later, the use of expedited removal was expanded to also apply to those who crossed a land border without inspection, and were encountered by immigration authorities both within two weeks of their arrival and within 100 miles of the border.⁵ For more than a decade, the government did not broaden its use of expedited removal to other noncitizens.

However, on two occasions, the government has expanded the application of the expedited removal process to the full scope permitted by law.⁶ From June 2020⁷ through March 2022, and again in January 2025 to the present,⁸ immigration officers have been authorized to apply it to:

- a. Any noncitizen who arrived at a port of entry, at any time, and is determined to be inadmissible for fraud or misrepresentation or lacking proper entry documents and
- b. Any noncitizen who entered without inspection (by land or sea), was never admitted or paroled, is encountered anywhere in the United States, and cannot prove that they have been physically present in the United States for the two years preceding the immigration officer’s determination that they are inadmissible for fraud or misrepresentation or lack of proper entry documents.⁹

Once an immigration officer determines that a noncitizen is subject to expedited removal, that same officer orders the noncitizen removed. Unlike other removal orders, an expedited removal order cannot normally be appealed and carries a five-year reentry bar in most circumstances.¹⁰

However, the expedited removal statute has certain narrow protections for people who indicate a fear of persecution or torture, or an intent to apply for asylum.¹¹

If an individual seeks to apply for asylum, or is afraid of returning to their home country, an immigration officer must refer them to a credible fear interview (CFI).¹² An asylum officer must then conduct a CFI,¹³ which is usually over the phone as individuals in custody are often detained far from the asylum officers.

If the asylum officer finds that the person has not shown a credible fear of return, that person's expedited removal order remains in place.¹⁴ Before deportation, the individual may challenge the asylum officer's finding by requesting a hearing before an immigration judge, who must review the case "to the maximum extent practicable within 24 hours, but in no case later than 7 days."¹⁵ The judge's review is limited solely to assessing whether the individual's fear is credible.

If the asylum officer finds that the person has successfully demonstrated a credible fear of persecution, the immigration officer revokes the expedited removal order, permitting the person to apply for protection in normal removal proceedings.

A similar, but different, summary removal process known as "reinstatement of removal" applies to individuals who are encountered after having been previously deported, and then reenter without inspection.¹⁶ For such noncitizens, an immigration officer may immediately reinstate their prior removal order wherever and whenever they are encountered.¹⁷ However, if someone in this position indicates a fear of return to their home country, an asylum officer must instead determine if the person has a "reasonable fear" of persecution—a higher standard for the noncitizen to meet than "credible fear."¹⁸



If the person subject to reinstatement of removal successfully shows they have a reasonable fear of persecution, they will be allowed to apply for withholding of removal or deferral of removal before an immigration judge.

Individuals found to have a credible or reasonable fear of persecution are detained pending further review of their asylum case.¹⁹ In some circumstances, the Department of Homeland Security (DHS) may choose to parole these individuals from custody—that is, release them from detention into the United States while their case is pending.²⁰

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The Use of Expedited Removal Over Time

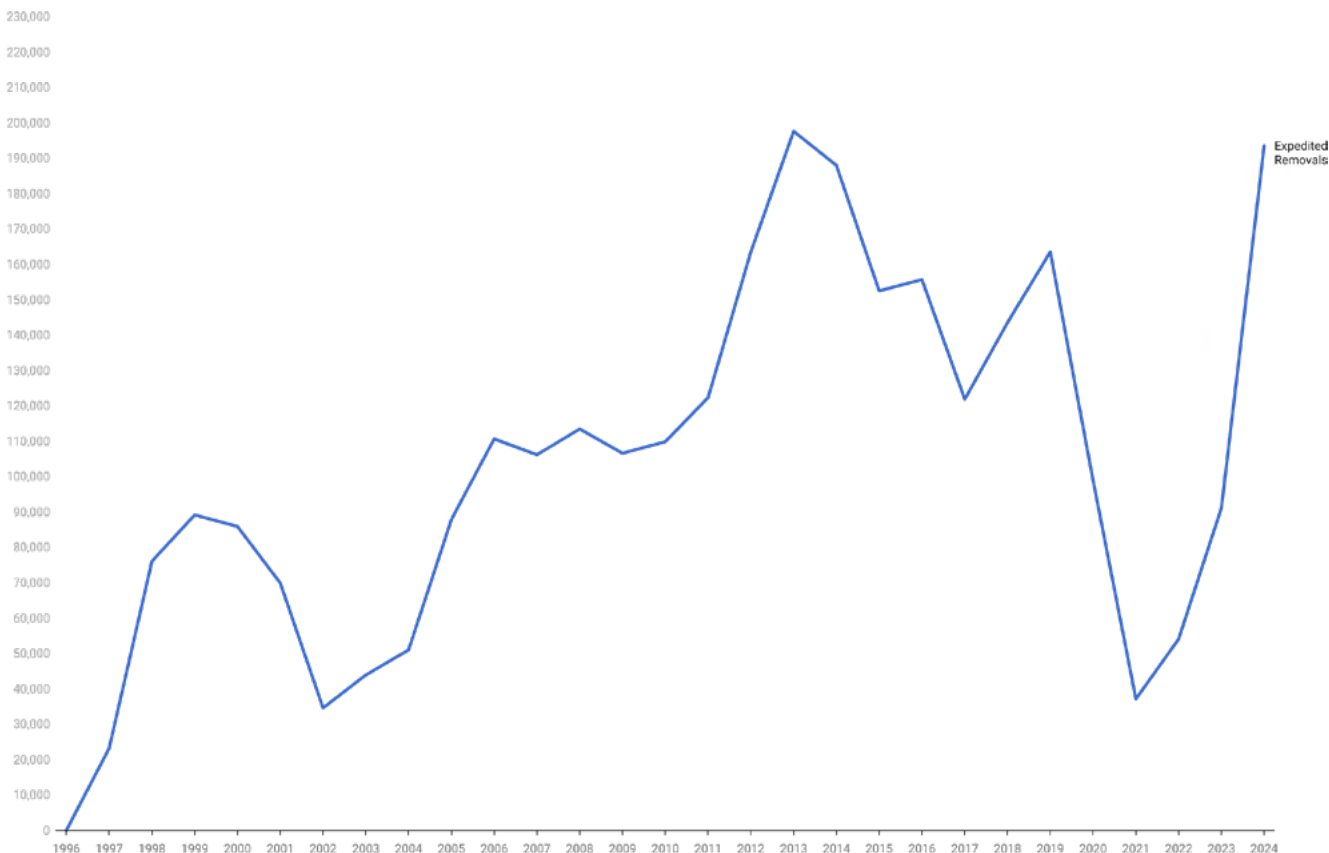
The use of expedited removal to deport people has generally risen substantially over the past two decades. Numbers peaked in FY 2013 when approximately 197,000 people were deported from the United States through expedited removal, which represented 46 percent of the 432,000 removals from the United States that year.²¹ The use of expedited removal fell significantly during fiscal years 2020 to 2023 when “Title 42” (a pandemic-related health policy permitting the rapid expulsion of migrants without access to asylum) was in effect.²² Since Title 42 ended in May 2023, immigration officers have placed over 20,000 migrants each month in the expedited removal process.²³

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FIGURE 1: DEPORTATIONS PURSUANT TO ORDERS OF EXPEDITED REMOVAL, FY 1996 TO 2024



Source: U.S. Department of Homeland Security, *Immigration Enforcement Actions Annual Flow Reports, 2004-2013*, <https://www.dhs.gov/ohss/topics/immigration/enforcement-AFB>; U.S. Department of Homeland Security, Office of Homeland Statistics, *Immigration Enforcement and Legal Processes Monthly Tables, "DHS Repatriations by Type: Fiscal Years 2014 to 2025 YTD (November 2024)"*, posted January 16, 2025, <https://ohss.dhs.gov/topics/immigration/immigration-enforcement/immigration-enforcement-and-legal-processes-monthly>.

Concerns About Expedited Removal

Erroneous Deportations

There are few checks on the authority of immigration officers to place noncitizens in expedited removal proceedings. In essence, the law permits a low-level immigration officer to serve both as prosecutor (charged with enforcing the law) and judge (rendering a final decision on the case). Generally, the entire process consists of a single interview with the inspecting officer while the noncitizen is detained, so there is little or no opportunity to consult with an attorney or to gather any evidence that might prevent deportation.²⁴

The abbreviated process increases the likelihood that a person who is not supposed to be subject to expedited removal—such as a U.S. citizen, lawful permanent resident, or anyone here on a temporary visa—will be erroneously removed.²⁵ Moreover, individuals who otherwise would be eligible to make a claim for “relief from removal” (to argue they should be permitted to stay in the United States) in immigration court may be unjustly deprived of any opportunity to pursue relief. For example, someone who has been the survivor of trafficking or a witness or survivor of a crime in the United States who assists law enforcement, might be eligible for status but is prohibited from pursuing such a claim while in expedited removal proceedings.²⁶

Inadequate Protections for People Seeking Protection

In practice, the government does not provide a credible or reasonable fear screening to all people expressing a fear of persecution if returned to their home countries. Studies by the U.S. Commission on International Religious Freedom (USCIRF) noted that, in some cases, immigration officers pressured individuals who expressed fear into withdrawing their application for admission—and thus their request for asylum—despite

DHS policies forbidding such pressure.²⁷ In other cases, government officers simply ignored the expressions of fear made by people arriving at the border.²⁸ USCIRF found that the government did not have sufficient quality assurance mechanisms in place to ensure that immigration officers were not improperly turning back people seeking asylum.²⁹

Furthermore, the short timelines involved with the credible fear screening process can make it extremely difficult for those traumatized from their journey or the harm they fled to clearly explain why they need protection in the United States. These obstacles hinder the ability for people needing protection to obtain access to the U.S. asylum system.



Matias Romero, Oaxaca/Mexico - Nov. 10, 2018 Photo by [Vic Hinterlang](#).

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A Growing Backlog of Asylum Applications

Individuals placed in expedited removal proceedings who express fear of return are referred to asylum officers for their screening interviews. These officers are often the same corps handling affirmative asylum applications (i.e., cases filed by individuals in the United States who are not in removal proceedings). Since people seeking asylum are often detained pending completion of the credible or reasonable fear process, their cases are prioritized by the government. Asylum Office resources are therefore diverted to these interviews, contributing to the growing backlog of affirmative asylum cases.³⁰

Lack of Judicial Review

Individuals placed in expedited removal generally have no right to challenge their deportation in federal court, thanks to jurisdiction-stripping provisions in the 1996 law which created the process.³¹ This means that even where an immigration officer acted unlawfully in issuing an order of expedited removal, a noncitizen is severely restricted in their ability to challenge that decision. Individuals may only bring a lawsuit challenging their expedited removal order if they are a lawful permanent resident, or someone already determined to be a refugee or granted asylum, who has been wrongfully subject to expedited removal. In 2020, the Supreme Court upheld this law, finding that it did not violate the right to habeas corpus or due process.³²

Expedited removal has become a bedrock of the United States' processing of noncitizens, particularly at our southern border. Procedural safeguards are necessary to ensure that the process does not result in the removal of people—particularly those seeking protection—contrary to United States law and international obligations.

Endnotes

- 1** Expedited removal applies to “arriving” noncitizens, which are defined as noncitizens who attempt to enter or seek admission through a U.S. port of entry or are interdicted in international or U.S. waters and brought to the U.S. See 8 C.F.R. § 1.2.
- 2** See 8 U.S.C. § 1225(b)(1)(A)(i), (iii).
- 3** See Hillel R. Smith, “The Department of Homeland Security’s Authority to Expand Expedited Removal,” *Congressional Research Service*, last updated April 6, 2022, 1, <https://crsreports.congress.gov/product/pdf/LSB/LSB10336>.
- 4** *Ibid.*
- 5** *Ibid.*
- 6** See “Designating Aliens for Expedited Removal,” 84 Fed. Reg. 35409 (July 23, 2019), rescinded by “Rescission of the Notice of July 23, 2019, Designation Aliens for Expedited Removal,” 87 Fed. Reg. 16022 (March 21, 2022); and “Designating Aliens for Expedited Removal,” 90 Fed. Reg. 8139 (January 24, 2025).
- 7** See *Make the Road New York v. Wolf*, 962 F.3d 612 (D.C. Cir. 2020) (reversing district court preliminary injunction preventing DHS from implementing the expansion from September 2019 to June 2020).
- 8** On January 22, 2025, the American Civil Liberties Union (ACLU) filed a lawsuit against DHS claiming the 2025 expansion of expedited removal violates the U.S. Constitution, violates the authorities provided to DHS under the Immigration and Nationality Act, and violates the procedures established under the Administrative Procedures Act. See *Make the Road New York v. Huffman*, No. 1:25-cv-0190 (D.D.C. Jan. 22, 2025).
- 9** See Hillel R. Smith, “The Department of Homeland Security’s Authority to Expand Expedited Removal,” *Congressional Research Service*, last updated April 6, 2022, <https://crsreports.congress.gov/product/pdf/LSB/LSB10336>; and 90 Fed. Reg. 8139.
- 10** See 8 U.S.C. § 1182(a)(9)(A)(i). Removal orders issued by immigration judges in regular removal proceedings (under Immigration and Nationality Act § 24) generally carry a ten-year inadmissibility bar. See 8 U.S.C. § 1182(a)(9)(A)(ii).
- 11** See 8 U.S.C. § 1225(b)(1)(A)(ii), (B); 8 C.F.R. § 235.3(b)(4).
- 12** See 8 C.F.R. § 235.3(b)(4).
- 13** See 8 U.S.C. § 1225(b)(1)(B)(i); see also United States Citizenship and Immigration Services, “Questions and Answers: Credible Fear Screening,” last updated January 10, 2025, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/questions-and-answers-credible-fear-screening>.
- 14** 8 U.S.C. § 1225(b)(1)(B)(iii)(I).
- 15** 8 U.S.C. § 1225(b)(1)(B)(iii)(III).
- 16** See American Immigration Council, “Practice Advisory: Reinstatement of Removal,” May 23, 2019, https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/reinstatement_of_removal.pdf.
- 17** See 8 U.S.C. § 1231(a)(5); see also United States Citizenship and Immigration Services, “Questions and Answers: Reasonable Fear Screenings,” last updated June 18, 2013, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/questions-and-answers-reasonable-fear-screenings>.

- 18** 8 C.F.R. § 241.8(e); See Holly Straut-Eppsteiner, Audrey Singer, Andorra Bruno, and Hillel R. Smith, “Credible and Defensive Asylum Processes: Frequently Asked Questions,” *Congressional Research Service*, last updated September 25, 2024, 12, <https://crsreports.congress.gov/product/pdf/R/R48078>.
- 19** 8 U.S.C. § 1225(b)(1)(B)(ii).
- 20** See “Designating Aliens for Expedited Removal,” 69 Fed. Reg. 48877 (August 11, 2004).
- 21** John F. Simanski, “Annual Report: Immigration Enforcement Actions: 2013,” U.S. Department of Homeland Security Office of Immigration Statistics, September 2014, 1, https://ohss.dhs.gov/sites/default/files/2023-12/Enforcement_Actions_2013.pdf.
- 22** American Immigration Council, “A Guide to Title 42 Expulsions at the Border,” May 25, 2022, <https://www.americanimmigrationcouncil.org/research/guide-title-42-expulsions-border>.
- 23** U.S. Customs and Border Protection, Custody and Transfer Statistics Fiscal Year 2024, “U.S. Border Patrol - Dispositions and Transfers,” last modified November 19, 2024, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics-fy2024>; U.S. Customs and Border Protection, Custody and Transfer Statistics Fiscal Year 2023, “U.S. Border Patrol - Dispositions and Transfers,” last modified January 29, 2025, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics-fy2023>.
- 24** Regulations address how an individual may establish a claim of permanent residence, refugee or asylee status, or previous admission, but are silent concerning the establishment of continuous presence. See 8 C.F.R. § 235.3.
- 25** See e.g., American Civil Liberties Union, “American Exile: Rapid Deportations that Bypass the Courtroom,” December 3, 2014, 44-54, <https://www.aclu.org/publications/american-exile-rapid-deportations-bypass-courtroom> (discussing cases of people lawfully in the United States who are deported without a hearing).
- 26** See, e.g., 8 U.S.C. § 1101(a)(15)(U).
- 27** See Elizabeth Cassidy and Tiffany Lynch, “Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal,” *United States Commission on International Religious Freedom*, August 3, 2016, 19, <http://www.uscirf.gov/sites/default/files/Barriers%20To%20Protection.pdf>; Mark Hetfield et al. “Report on Asylum Seekers in Expedited Removal, Volume I: Findings & Recommendations,” *United States Commission on International Religious Freedom*, February 1, 2005, http://www.uscirf.gov/sites/default/files/resources/stories/pdf/asylum_seekers/Volume_I.pdf.
- 28** See Human Rights First, “Don’t Tell Me About Your Fear,” August 7, 2024, <https://humanrightsfirst.org/library/dont-tell-me-about-your-fear/>.
- 29** See Elizabeth Cassidy and Tiffany Lynch, “Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal,” *United States Commission on International Religious Freedom*, August 3, 2016, <http://www.uscirf.gov/sites/default/files/Barriers%20To%20Protection.pdf>.
- 30** See U.S. Department of Homeland Security, Office of Inspector General, “USCIS Faces Challenges Meeting Statutory Timelines and Reducing Its Backlog of Affirmative Asylum Claims,” July 3, 2024, 9, <https://www.oig.dhs.gov/sites/default/files/assets/2024-07/OIG-24-36-Jul24.pdf>.
- 31** See 8 U.S.C. § 1252(e).
- 32** See *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020).