

A Primer on Expedited Removal

Expedited removal is a process by which low-level immigration officers can summarily remove certain noncitizens without a hearing. Undocumented noncitizens 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, expedited removal applies to noncitizens who arrive at a port of entry if they do not have entry documents or if they have tried to enter through fraud or misrepresentation, with certain exceptions.¹ It has also been expanded to noncitizens who entered by sea without inspection and who have been in the United States for less than two years, and to those who cross a land border without inspection and are arrested within two weeks of their arrival and within 100 miles of the border.² From June 2020 through March 2022, immigration officers were authorized to use expedited removal to the full extent permitted by law. This expansion of the regime enabled officers to apply it to any noncitizen who had not been “admitted or paroled” into the United States (those who had “entered without inspection”) and who could not establish that they had been physically present in the United States for the previous two years.³

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

However, there are certain protections for people who indicate a fear of persecution or torture, or an intent to apply for asylum.⁴

If an individual says that they want to apply for asylum, or are afraid of returning to their home country, they must be referred to a credible fear interview (CFI).⁵ When encountered by border patrol agents, a noncitizen is supposed to be asked about their fear of return to their home country, according to Customs and Border Protection (CBP) guidelines.⁶ A CFI will then be conducted by an asylum officer.⁷ This is usually conducted over the phone, as individuals in custody are often far away from the asylum officers. If an individual has been previously deported and then reenters without inspection, an immigration officer may immediately reinstate their prior removal order. 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.”⁸

If the asylum officer finds that the person has not shown that they have a credible or reasonable fear of return, that person’s expedited removal order remains in place.⁹ Before deportation, the individual may challenge the asylum officer’s adverse 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.”¹⁰ The judge’s review is limited solely to assessing whether the individual’s fear is credible or reasonable.

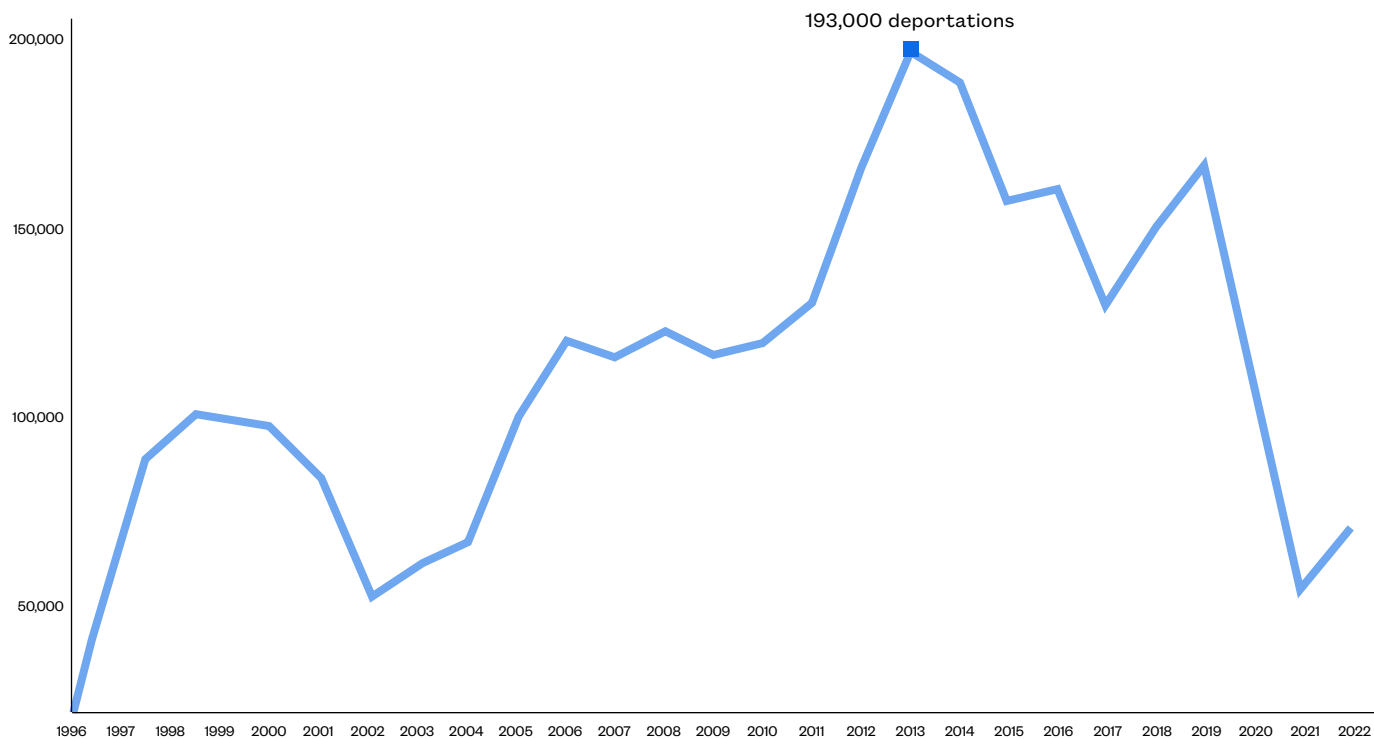
If the asylum officer finds that the person has successfully demonstrated that they have either a credible or reasonable fear of persecution, then the order of expedited removal (or a reinstated prior order of removal) is revoked and the person will be permitted to apply for protection in normal removal proceedings. Individuals found to have a credible or reasonable fear of persecution are detained pending further review of their asylum case.¹¹ In some circumstances, these individuals may be paroled—that is, released from detention and permitted to remain in the United States while their asylum case is pending.¹²

The Use of Expedited Removal Over Time

The use of expedited removal to deport people has risen substantially over the past two decades, peaking in FY 2013 when approximately 193,000 persons were deported from the United States through expedited removal, which represented 43 percent of the 438,000 removals from the United States that year.¹³ The use of expedited removal fell significantly during fiscal years 2020 to 2023 when “Title 42” (a pandemic-related health policy permitting rapid expulsion of migrants without access to asylum) was in effect.¹⁴ Since Title 42 ended in May 2023, each month over 20,000 migrants have been placed in the expedited removal process.¹⁵

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FIGURE 1: DEPORTATIONS PURSUANT TO ORDERS OF EXPEDITED REMOVAL, FY 1996 TO 2022



Source: U.S. Department of Homeland Security, *Immigration Enforcement Actions Annual Flow Reports, 2004-2022*, <https://www.dhs.gov/ohss/topics/immigration/enforcement-AFR>.

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 the 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 an interview with the inspecting officer, so there is little or no opportunity to consult with an attorney or to gather any evidence that might prevent deportation.¹⁶

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 or lawful permanent resident—will be erroneously removed. 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 victim of trafficking or a witness or victim of a crime in the United States who assists law enforcement might be eligible for status but is prohibited from making such a claim in expedited removal proceedings.¹⁷

Inadequate Protection of Asylum Seekers

In practice, not all persons expressing a fear of persecution if returned to their home countries are provided a credible or reasonable fear screening. 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 Department of Homeland Security policies forbidding such pressure. In other cases, government officers failed to ask if the arriving individual feared return. In addition, USCIRF found that the government did not have sufficient quality assurance mechanisms in place to ensure that asylum seekers were not improperly being turned back.¹⁸

For those who are traumatized from their journey or the harm they fled, the short timelines involved with the credible fear screening process can make it extremely difficult to clearly explain why they need protection in the United States.

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 these asylum seekers 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.¹⁹

Lack of Judicial Review

Individuals placed through 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.²⁰ 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*.²¹

Expedited removal has become a bedrock of the United States’ processing of noncitizens, particularly at our southern border. Limited protections for those who should not be summarily removed—particularly asylum seekers—are necessary to ensure that the process does not result in the removal of individuals contrary to United States law and international obligations.

Endnotes

- 1 8 U.S.C. §1225(b)(1). There is an exception made for “an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry.”
- 2 8 U.S.C. § 1225(b)(1)(F).
- 3 Congressional Research Service, “Expedited Removal of Aliens: An Introduction,” updated March 25, 2022. <https://crsreports.congress.gov/product/pdf/IF/IF11357>.
- 4 Daniel Wiessner, “DHS withdraws Trump-era rule that expanded quick deportations,” *Reuters*, March 18, 2022, <https://www.reuters.com/legal/litigation/dhs-withdraws-trump-era-rule-that-expanded-quick-deportations-2022-03-18/>.
- 5 8 C.F.R. 235.3(b)(4).
- 6 8 C.F.R. 235.3(b)(4).
- 7 United States Customs and Border Protection, “Claims of Fear,” last modified July 17, 2020, <https://www.cbp.gov/newsroom/stats/sw-border-migration/claims-fear>.
- 8 United States Citizenship and Immigration Services, “Questions and Answers: Credible Fear Screening,” last reviewed/updated September 12, 2023, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/questions-and-answers-credible-fear-screening>.
- 9 8 U.S.C. § 1225(b)(1)(B)(iii)(I).
- 10 8 U.S.C. § 1225(b)(1)(B)(iii)(III).
- 11 8 U.S.C. § 1225(b)(1)(B)(ii).
- 12 69 Fed. Reg. 48877-48881 (August 11, 2004).
- 13 U.S. Department of Homeland Security Office of Immigration Statistics, “Annual Report: Immigration Enforcement Actions: 2013,” September 2014, at 1, https://www.dhs.gov/sites/default/files/publications/Enforcement_Actions_2013.pdf.
- 14 American Immigration Council, “A Guide to Title 42 Expulsions at the Border,” last modified May 25, 2022, <https://www.americanimmigrationcouncil.org/research/guide-title-42-expulsions-border>.
- 15 U.S. Customs and Border Protection, “Custody and Transfer Statistics,” last modified November 14, 2023, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics>; U.S. Customs and Border Protection, “Custody and Transfer Statistics Fiscal Year 2023,” last modified November 14, 2023, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics-fy2023>.
- 16 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. 8 C.F.R. § 235.3.
- 17 See, e.g., 8 U.S.C. § 1101(a)(15)(U).
- 18 United States Commission on International Religious Freedom, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal* (Washington, DC, August 2016), <http://www.uscirf.gov/sites/default/files/Barriers%20To%20Protection.pdf>; United States Commission on International Religious Freedom, *Report on Asylum Seekers in Expedited Removal, Volume I: Findings & Recommendations* (Washington, DC, February 2005), http://www.uscirf.gov/sites/default/files/resources/stories/pdf/asylum_seekers/Volume_I.pdf.
- 19 In FY 2015, 30 asylum officers were continuously detailed at two family residential facilities on the southwest border to conduct credible fear screenings. U.S. Citizenship and Immigration Services, *USCIS Response to the Citizenship and Immigration Services Ombudsman’s (CISOMB) 2015 Annual Report to Congress* (Washington, DC, June 2016), 24, https://www.uscis.gov/sites/default/files/document/reports/CISOMB_FY15_Annual_Report_Final_.pdf.
- 20 8 U.S.C. § 1252(e).
- 21 *Dep’t of Homeland Sec. v. Thuraissigiam*, 140 S.Ct. 1959 (2020).