



AILA's Take on No-Process Removals

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Hundreds of thousands of individuals are removed from the United States without the opportunity to present their case before an immigration judge. These “no-process” removals, including expedited removal and reinstatement of removal, have increased dramatically in recent years to **83 percent of all DHS removals in FY2013**. These speedy removal procedures that levy severe repercussions not only erode due process but also harm families, business, and vulnerable populations.

What is Expedited Removal?

Individuals arriving at U.S. ports, or who are apprehended within 100 miles of any U.S. border within 14 days of entry, and who are determined to have made a “material misrepresentation” or simply lack proper documents are subject to expedited removal, which bars the individual from returning to the U.S. for five years. This procedure allows an enforcement agent to remove someone with the stroke of a pen just hours after arrest.

What is Reinstatement of Removal?

Individuals who reenter the United States after a prior removal order are subject to an immediate reinstatement of the removal order, no matter how old the prior removal order was, whether the individual knew of the prior order, or if there are compelling circumstances surrounding the return.

Yolanda has lived in New Jersey for 13 years. She has a 12-year-old U.S. citizen daughter with learning disabilities as well as two U.S. citizen grandchildren. She has been fighting breast cancer since 2007. She has no criminal history.

When Yolanda was diagnosed with breast cancer, she did not have insurance, so she sought treatment in Mexico. Two of her daughters came with her to be near her; one remained in the U.S. to finish high school. When Yolanda recovered from her mastectomy, chemotherapy and radiation, she and her daughters attempted to return to the U.S. to reunite their family. But Yolanda was caught at the border and quickly issued an “**expedited removal**” order. Border Patrol did not even consider her equities. Terrified of returning to Mexico – several of her husband’s family members were murdered there – and desperate to be with her daughters, Yolanda illegally re-entered the U.S. in 2009.

In 2013, when she was stopped by police for a traffic violation, she was turned over to ICE and issued a “**reinstatement of removal**” order. She asked ICE for discretion. But all they gave her was six months to get her affairs in order.

What are the problems with these “No-Process” removals?

- ♦ **No review for mistakes by low-level officers.** It is extremely difficult to obtain any judicial review of a no-process removal order. In the vast majority of cases, the only “review” is to the agent’s own supervisor. The limited review coupled with the risk of arbitrariness and error has a devastating impact on businesses and families.
- ♦ **Woefully inadequate process.** Individuals subjected to expedited removal or reinstatement of removal have no right to consultation with counsel or to present evidence beyond what they are carrying at the time. Immigration judges only get involved if you have a green card holder or are an asylum seeker.
- ♦ **Inadequate safeguards for those who have equities or are vulnerable.** No-process removals are made so quickly that no time is taken to see if an individual merits discretion or needs protection. Vulnerable individuals like asylum seekers are particularly hard-hit by these procedures, especially when Border Patrol agents have failed to ask about or have completely ignored, a person’s fear of persecution.
- ♦ **Harsh consequences:** These are formal removal orders, not returns, so they carry harsh penalties, including mandatory barriers to entry anywhere from 5 to 20 years.