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Policy Brief:

What Would Be the Impact of Expanding Expedited Removal Nationwide?

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Reportedly, as part of border negotiations, the White House is offering to expand federal authority to apprehend, detain and rapidly deport people from throughout the interior of the country using expedited removal (ER). AILA opposes this idea for the following reasons: Such an expansion would put undocumented people nationwide at risk of deportation without due process. It would not improve border security or migrant processing at the border because ER already applies to recent arrivals near the border. This power could be used to deport people in mass numbers which would be disastrous for [American communities and the economy](#).

What is expedited removal? Established by statute in 1996, ER authorizes immigration officials to quickly remove noncitizens who lack a visa or have committed fraud or misrepresentation “without further hearing or review.”

- ER is currently applicable only to individuals who
 - enter our border without being admitted or paroled; or
 - who entered without authorization if they are apprehended within two weeks of arrival and within 100 miles of U.S. borders.
- ER gives nearly unfettered authority to an immigration officer to order deportation without due process protections such as the right to an attorney or hearing before a judge.
 - The noncitizen bears the burden of demonstrating that:
 - they were admitted or paroled into the U.S; or
 - can establish that they’ve been in the U.S. continuously for two years.
 - The noncitizen has “no right to counsel, no right to a hearing, and no right to appeal an adverse ruling.”
- After being removed under ER, a person is barred from returning for 5 years.

What would be the impact if ER were applied nationwide?

- An expansion of ER would primarily impact people living in the interior of the country, since ER already can be used against recent arrivals near the border. Undocumented individuals nationwide would be at risk of ER’s rapid apprehension and deportation procedures and would be denied the opportunity to consult an attorney or receive a hearing before a judge unless they claim asylum.
 - Many more people would be deported unfairly and erroneously, a problem that has been documented in the ER procedure due to the speed of the process and lack of any review process.
- With such expansive power, a president could order sweeps to apprehend large numbers of people and then rapidly deport them.
- **Family separation:** Under prior administrations, whole families, including infants, were detained under ER, but this policy will also lead to family separation as mixed status families are torn apart by expedited removal.

- Expanding ER to the interior would significantly and negatively impact local communities. Indeed, when the Department of Homeland Security [rescinded](#) the Trump-era policy that would implement expedited removal in the interior, the agency acknowledged individuals apprehended in the interior “may have developed significant ties to the community.”
- Mass deportations hurt the economy. A [ProPublica study](#) found that “deporting the estimated 11.3 million undocumented people in this country would be an almost \$8 trillion hit to the economy over the next 14 years.”
- Expansion of ER nationwide would likely drive more people who are undocumented into the shadows, making it more difficult for the government to identify them and enlarging the underclass of people who are more vulnerable to labor abuses, criminal activity, and other forms of exploitation.
- ER already disproportionately impacts communities of color and this can be true within the interior as well. One study found “[more than 96%](#) of people apprehended were people of color and **one third** of those apprehended by Border Patrol were [U.S. citizens](#).”

How does expedited removal generally apply to asylum seekers?

- Generally, when ER is applied to an asylum seeker, an asylum officer must conduct a [credible fear](#) interview (CFI) to assess preliminarily the risk of persecution if they are deported. The CFI protects people from being sent into harm’s way as guaranteed in U.S. humanitarian protection law.
 - Positive CFI: the noncitizen is usually paroled into the country to seek asylum.
 - Negative CFI: the noncitizen may affirmatively request a review of this determination before the IJ. If the IJ affirms the asylum officer’s decision, the noncitizen is removed.
- Access to counsel is significantly limited during the CFI process.
 - [Under regulations](#), the noncitizen *may* consult with a person of their choosing, including an attorney, however access to counsel is significantly limited and an IJ may refuse to allow the attorney to speak during the review.
 - [Available data](#) from the asylum processing rule shows only one percent of CFIs processed under this rule have attorney representation.

Additional sources

AILA, [Policy Brief: The Asylum Credible Fear Process](#)

AILA, [Policy Brief: What Would be the Impact of Capping Asylum?](#)

American Immigration Council, [A Primer on Expedited Removal](#)