



## **Expedited Removal of Noncitizens in the United States**

### **What is expedited removal?**

Ordinarily, when the U.S. Department of Homeland Security (DHS) seeks to remove a noncitizen from the United States, the individual undergoes removal proceedings within the immigration courts operated by the Department of Justice's Executive Office for Immigration Review (EOIR), as provided for by Title 8 of the U.S. Code. These proceedings are commonly known as "240 proceedings," since they are described in section 240 of the Immigration and Nationality Act (INA). Within the context of removal proceedings, the noncitizen has certain due process rights. These rights include "the right to counsel at his own expense, the right to apply for any available relief from removal (such as asylum), the right to present testimony and evidence on the alien's own behalf, and the right to appeal an adverse decision to the Board of Immigration Appeals".<sup>1</sup>

The expedited removal authority was created by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and is codified at 8 U.S.C. 1225. This statute authorizes DHS to remove noncitizens without a hearing or review if the noncitizen does not possess valid entry documents or if admission to the United States was attempted through fraud or misrepresentation. Exceptions exist for those who demonstrate intent to apply for asylum, express a fear of persecution, or who present at a port of entry via aircraft from a Western Hemisphere country that does not have full diplomatic relations with the United States. In the time since IIRAIRA's implementation, expedited removal has primarily been utilized near the border or at ports of entry.<sup>2</sup> However, the statute permits the Secretary of DHS to remove noncitizens from the interior of the country who have not been admitted or paroled into the United States and have been present in the country for less than two years.

### **What are some potential issues with expedited removal?**

Unlike individuals in INA section 240 proceedings, persons with an order of expedited removal are generally unable to appeal the order. The immigration officer has the broad and nearly indisputable authority to remove the individual from the United States.<sup>3</sup> Challenges to removal

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<sup>1</sup> HILLEL R. SMITH, THE DEPARTMENT OF HOMELAND SECURITY'S AUTHORITY TO EXPAND EXPEDITED REMOVAL 1, CONGRESSIONAL RESEARCH SERVICE, <https://crsreports.congress.gov/product/pdf/LSB/LSB10336> (last updated Apr. 6, 2022).

<sup>2</sup> *Id.*

<sup>3</sup> See AMERICAN IMMIGRATION COUNCIL, A PRIMER ON EXPEDITED REMOVAL 3 (Dec. 2023), [https://www.americanimmigrationcouncil.org/sites/default/files/research/primer\\_on\\_expedited\\_removal\\_factsheet\\_2023.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/primer_on_expedited_removal_factsheet_2023.pdf).

would have to address the actual order indirectly through interventions such as habeas corpus actions to dispute the legality of a migrant’s detention or by broadly contesting the larger expedited removal system.<sup>4</sup> Those who are most vulnerable and in need of protection are the least likely to have the financial resources, let alone the legal representation or expertise, to undergo such complex proceedings. The inability to appeal an order of removal can have deleterious consequences for those who would otherwise be eligible for relief from removal. It follows that even those who are admissible to the United States, fleeing persecution, or escaping human trafficking could be returned erroneously to situations of danger without an opportunity to appeal if they weren’t found to be in possession of appropriate documents.<sup>5</sup>

The International Religious Freedom Act of 1988 authorized the U.S. Commission on International Religious Freedom (USCIRF) to study the treatment of asylum seekers in expedited removal proceedings. The first assessment in 2005 was followed by a 2016 USCIRF report entitled “Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal.” The document raised concerns over CBP practices that result in asylum seekers not always being afforded the opportunity to pursue their claims in potential violation of U.S. and international law.<sup>6</sup>

### **How is expedited removal different from rapid expulsions, such as those seen under Title 42?**

The Title 42 public health order, implemented during the COVID-19 pandemic, permitted the rapid expulsion of noncitizens who presented for entry to the United States without any formal removal order or right to seek asylum. Expedited removal can apply to those who were not admitted to the United States and who cannot prove continuous presence; statutory exceptions exist for asylum seekers, and individuals are formally ordered to be removed.

### **Has the USCCB taken a position on the use of expedited removal?**

Due to the ways in which expedited removal significantly curtails due process for noncitizens and increases the chances of vulnerable people being returned to harm, the USCCB has frequently expressed concern about its use. This includes statements released in [2019](#) and [2021](#),<sup>7</sup> wherein the USCCB urged the Trump Administration and Biden Administration, respectively, to respect due process and ensure the human dignity of migrants is honored. While upholding the right of nations to place certain juridical conditions on migration,<sup>8</sup> Catholic social teaching reminds us that this right must be balanced with the responsibility to simultaneously respect the life and dignity of the

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<sup>4</sup> HILLEL R. SMITH, EXPEDITED REMOVAL OF ALIENS: AN INTRODUCTION 2, CONGRESSIONAL RESEARCH SERVICE, <https://crsreports.congress.gov/product/pdf/IF/IF11357> (last updated Mar. 25, 2022).

<sup>5</sup> See *supra* note 3.

<sup>6</sup> Elizabeth Cassidy & Tiffany Lynch, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal* 56, U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, <https://www.uscirf.gov/sites/default/files/Barriers%20To%20Protection.pdf> (last updated 2016).

<sup>7</sup> Available at <https://www.usccb.org/news/2019/chair-usccb-committee-migration-calls-reversal-expansion-expedited-removal-cites-family> and <https://www.usccb.org/news/2021/us-bishops-migration-chairman-urges-administration-protect-families-ensure-due-process>.

<sup>8</sup> Catechism of the Catholic Church, no. 2241.

most vulnerable, including the “stranger” described in Scripture.<sup>9</sup> These rights and responsibilities are complimentary. The legitimate interests of the state to regulate immigration should not be carried out in such a way that the rights and responsibilities of newcomers are disregarded and vice versa. Rather, they should be executed together in pursuit of the common good. The USCCB underscored this in a recent [letter](#) to both chambers of Congress regarding supplemental funding and ongoing negotiations that have included the potential for expanding expedited removal.<sup>10</sup>

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<sup>9</sup> *See, e.g.*, Matthew 25:31–46.

<sup>10</sup> Available at <https://www.usccb.org/resources/USCCB%20Letter%20on%20National%20Security%20Supplemental%20Funding%2012.14.2023.pdf>.