

DHS Seeks to Expand Expedited Removal

The Department of Homeland Security (DHS) announced a policy change on July 23, 2019 that would expedite the deportation of undocumented immigrants anywhere in the United States if they can't prove that they have been living in the U.S. continuously for two years. This represents a major shift from the previous policy, which provided that the only undocumented immigrants subject to "expedited removal" were those apprehended within two weeks of entering the country and within 100 miles of the border. Thus, a whole new universe of people could be deported before they have had a chance to have their case heard by an immigration judge.

What is Expedited Removal?

Expedited removal is a fast track, summary process for removing certain noncitizens without a hearing before an immigration judge. By statute, expedited removal applies only to individuals who are inadmissible pursuant to INA §§212(a)(6)(C) and (a)(7) - that is, individuals who lack valid entry documents, who commit fraud or misrepresent a material fact to obtain admission, or who falsely claim U.S. citizenship.

In the announcement, DHS stated that it will expand expedited removal nationwide to individuals who are inadmissible under INA 212(a)(6)(C) or (7) and have been in the U.S. for less than 2 years. The announcement asserts that DHS is exercising the full remaining scope of its statutory authority to place noncitizens in expedited removal proceedings. The Notice is not a proposed or final rule, but rather notification to the public that it will be changing its policy. DHS asserts that it is not required to undergo notice-and-comment rulemaking but is nonetheless accepting comments for 60 days after July 23. Media outlets had reported earlier this year that the Administration was considering this plan.

Who Did Expedited Removal Apply to Prior to July 23, 2019?

Before the recent announcement, DHS had applied expedited removal to noncitizens inadmissible under INA §§212(a)(6)(C) and (a)(7) encountered within 100 air miles of the border who have not been physically present in the United States continuously for 14 days.

Who Will Expedited Removal Apply to Starting July 23, 2019?

The new policy expands the use of expedited removal to cover the whole country and to apply to noncitizens who have been in the U.S. for less than two years. Thus, beginning on July 23, 2019, DHS will apply expedited removal to all noncitizens who are inadmissible under to INA §§212(a)(6)(C) and (a)(7) and who have not been continuously physically present in the U.S. for at least two years, no matter where in the country ICE or CBP encounters them. This significant expansion will mean that DHS officers in the interior of the country will be able to bypass immigration court and put noncitizens directly on a fast track to removal.

How Will the Expansion Be Applied and Implemented?

There are very few details on how the government will implement such a far-reaching, immense change. However, the following information may be helpful in order to understand the new policy:

- **Fear of Persecution Abroad:** Anyone who is subject to expedited removal and expresses a fear of persecution abroad will be subject to current procedures for credible fear screenings.
- **Prosecutorial Discretion:** DHS states that immigration officers may exercise their discretion to allow affected noncitizens to return voluntarily, withdraw applications for admission, or be placed in full removal proceedings before a judge. It plans to issue

guidance on the use of this discretion but does not specify a timeline for the guidance or whether it will be made public.

- **Physical Presence Requirement:** The Notice specifies that any absence from the U.S. would break the physical presence requirement. The burden is on noncitizens to show that they have been in the U.S. for at least two years, but DHS has not indicated what evidence it will accept to prove two years of continuous physical presence. It states only that DHS officers will place noncitizens in expedited removal if they have not shown "to the satisfaction of an immigration officer" that they have been "physically present in the United States continuously for the two year period immediately preceding the date of the determination of inadmissibility."

Is Anyone Planning to Sue?

The American Immigration Council, along with the American Civil Liberties Union, have announced that they plan to sue the government to stop the expansion of expedited removal.