



## EXPANSION OF EXPEDITED REMOVAL STOPPED BY COURT

On July 23, 2019, DHS issued a notice, expanding the reach of expedited removal to individuals who have been living in the United States for two years or less, and who live anywhere in the United States. This would allow noncitizens to be deported without an opportunity to gather evidence or to present their case to a judge. On August 6, 2019, the American Immigration Council, the American Civil Liberties Union, and the law firm of Simpson Thatcher & Bartlett LLP filed suit challenging the legality of this expansion, *Make the Road New York v. McAleenan*, Case 1:19-cv-02369. On September 27, 2019, the court granted a preliminary injunction in this case, which blocks the expansion of expedited removal from taking effect while the court decides the case.

Thus, the expedited removal process continues to apply only to those within 100 miles from the border and who have been in the U.S. for 14 days or less, and to those who arrive by sea. Outside of this limited context, immigration officers cannot process someone for expedited removal and most noncitizens will have an opportunity to present their case in front of an immigration judge. Based on the injunction, noncitizens within the United States may exercise their right to remain silent, to not open their door without a warrant, and to ask to see a lawyer without worry that expedited removal could apply to them.

The Immigrants' Rights Clinic at Stanford Law School in partnership with the Immigrant Legal Resource Center created the attached toolkit to help advocates provide advice should the expansion of expedited removal take effect.



**WARNING!** The purpose of this toolkit is to provide advice should the expansion take effect. Due to the court's injunction, DHS's announced expansion is not currently in effect.

# TOOLKIT TO ASSIST PEOPLE FACING EXPANDED EXPEDITED REMOVAL

Dear Community Leader,

You are receiving this packet because expedited removal—a federal policy that allows immigration officials to deport people with almost no process—has been expanded to cover people nationwide. Under the new policy, expedited removal can be applied to noncitizens living anywhere in the U.S. that have lived here less than 2 years and entered without proper documents. The materials in this packet are intended to be used by immigration practitioners and know-your-rights presenters. Given the nuances and intricacies of expedited removal, we do not recommend that the enclosed materials be distributed to the public without accompanying know-your-rights presentations and individual consultation. We hope that these materials will help you assist and counsel people who might be subject to this changed enforcement policy. The materials include:

1. An information sheet that provides an overview of the expanded expedited removal process
2. A flowchart with accompanying instructions that will tell you what advice to give a particular person based on several factors
3. A red card handout—first defense is to assert your rights! Where possible, remaining silent is still a good strategy.

***Please read all information and instructions carefully. Expedited removal advice will be highly case-specific, so it is important to follow the case-specific advice.***



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# OVERVIEW OF EXPANDED EXPEDITED REMOVAL

This information sheet is designed for legal services practitioners and know-your-rights presenters.

## WHAT IS EXPEDITED REMOVAL?

Expedited removal is a process that immigration officials can use to quickly deport certain people from the United States without allowing them the opportunity to see a judge or an attorney before being deported. See 8 U.S.C. § 1225(b)(1).

## WHO MAY BE SUBJECT TO EXPEDITED REMOVAL PROCEEDINGS?

A person can be put in expedited removal if stopped or apprehended and:

- Entered the U.S. without inspection or without valid papers, and
- Cannot show they have been in the U.S. at least two years

\*A person can also be placed in expedited removal proceedings if she arrives at a U.S. port of entry and is inadmissible due to a lack of valid entry documents or misrepresentations and false claims to U.S. citizenship.

## ARE THERE ANY EXCEPTIONS?

If, during the expedited removal process, the noncitizen indicates that she fears returning to her country of origin, the immigration officer should refer her to a “credible fear” interview with an asylum officer. If the asylum officer decides that she has a credible fear of persecution, she should be transferred into regular removal proceedings, where she is entitled to a hearing with an immigration judge. If the officer decides that she does not have a credible fear, she may seek review of the decision by an immigration judge.

Unaccompanied children are not subject to expedited removal.

## HOW IS EXPEDITED REMOVAL DIFFERENT FROM A REGULAR REMOVAL PROCEEDING?

People in expedited removal are not afforded a regular immigration court hearing before a judge. There is no chance to apply for an immigration benefit, unless the person shows credible fear of return to her home country.

Instead, immigration officers serve as both the prosecutor and judge: they can arrest the noncitizen and order her deported, sometimes in the same day. Given how fast the expedited removal process is, noncitizens rarely have the opportunity to collect evidence or consult with an attorney.

People subject to expedited removal are detained until deported. There is no right to appeal the decision that you are subject to expedited removal—someone wrongfully considered subject to expedited removal must file a motion to reopen to the agency. Asserting a fear of return is the main way to stop the process.

## HOW CAN ONE KNOW IF SHE IS IN EXPEDITED REMOVAL PROCEEDINGS?

Officers may begin to ask individuals if they have been in the United States for at least two years. The immigration officer may not necessarily tell a person that she is facing expedited removal. Nevertheless, one sign that she is in expedited removal proceedings is if the immigration officer asks her whether she has a fear of being deported from the U.S. or returned to her home country. See 8 C.F.R. § 235.3(b)(2)(i) (requiring reading of form I-867A). A person will only know for certain that she is in expedited removal proceedings if the officer provides her with a Form I-860, "Notice and Order of Expedited Removal."

## HOW HAS EXPEDITED REMOVAL CHANGED UNDER PRESIDENT TRUMP?

In 1996, Congress created the expedited removal process. Prior to President Trump, expedited removal applied to people who had entered within the previous 14 days, and were stopped within 100 miles of the Canadian or Mexican land borders. In practice, immigration officers mostly applied expedited removal directly at the borders. In January 2017, President Trump asked the Department of Homeland Security (DHS) to "expand" expedited removal. On July 23, 2019, DHS expanded expedited removal so that it now covers any person without status nationwide who entered without inspection and cannot show they have been present in the U.S. for two years.

\*Certain inadmissible individuals arriving at a U.S. port of entry are also subject to expedited removal, just as they were prior to the Trump administration.

This document draws on a range of sources, including:

- DHS Notice Designating Aliens for Expedited Removal, 84 FR 35409, 7/23/19.
- American Civil Liberties Union, American Immigration Council, and National Immigration Project, "Expedited Removal: What Has Changed Since Executive Order No. 13767" (Feb. 20, 2017);
- American Immigration Council, "A Primer on Expedited Removal" (Feb. 3, 2017).



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## NAVIGATING EXPEDITED REMOVAL

### USING THE FLOWCHART

This document provides a step-by-step guide to using the flowchart, “Navigating Expedited Removal,” while advising individuals about what they should do and say if confronted with a possible expedited removal. Part I walks through how to use the flowchart; Part II provides examples of signs indicating that an individual is facing expedited removal; Part III lists suggested documents individuals can carry to prove two-years of continuous presence in the U.S.; and Part IV lists language individuals should learn and recite to assert proof of two-years of continuous presence in the U.S., credible fear, LPR status, citizenship, or lawful presence as a legal status holder.

*This flowchart is designed to be used by legal services practitioners and know-your-rights presenters. Practitioners and presenters may consider sharing the flowchart with impacted community members, but only after the presenter/practitioner has reviewed the flowchart with the impacted community member.*

#### I. USING THE FLOWCHART

**Step 1:** If an individual is stopped (by anyone, including an ICE agent, CBP agent, or police officer), advise her to stay silent (regardless of her legal status) *until* she knows for certain that the officer has evidence the person is foreign born. If unclear, see Part II to determine if the person is being subjected to expedited removal.

- If the officer has no information the person is foreign born, advise her to stay silent and, if allowed, to walk away (this advice mirrors the ILRC’s red card advice).
- If there is information the person is foreign born, the officer could evaluate whether she *is* subject to expedited removal, move to step 2.

**Step 2:** If the officer knows the person is foreign born, what advice to give depends on how she entered the United States and her immigration status. Ask what the individual’s legal status is (undocumented, LPR, citizen, or legal status holder (e.g., valid visa, asylum seeker, U-visa applicant, T-visa applicant)):

- **Undocumented:** If she is undocumented, follow the series of steps on the “Undocumented” portion of the flow-chart to determine what advice to give the individual. It is important to advise an individual based first on her length of

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presence in the United States, then how she entered the U.S. and whether she has a credible fear, and last consider remaining silent if none of these exclusions apply. This priority of questions and advice is designed to help an undocumented individual avoid expedited removal while *not* revealing more information than necessary about her alienage, status, or other identifying information. A person, for instance, can show documents that they have lived in the U.S. for two years without revealing any facts that the person was born in another country. Revealing certain information could lead an ICE agent to initiate removal proceedings against her. (Showing proof of two-years of presence in the United States, for example, does not concede alienage, but revealing that you have a credible fear of return to another country indicates that you are from another country. Likewise admitting that you entered with inspection requires explaining you came from somewhere else).

- **First**, ask if she has been here for two years. If yes, then advise her to show documents proving two-years of presence (*see part III below*) and recite the drafted language for proving time in the U.S. (*see part IV below*). (*Note: an individual might have both been in the U.S. for two years and have a credible fear or entry with inspection.*)
  
- **Second**, if she is undocumented and has *not* been here for two years, ask how the person entered the United States, and if she has a credible fear of returning to her country of origin. Expedited removal applies only to people who entered without inspection. If the person was admitted or paroled in at the border, they are not subject to expedited removal. If they entered with a visa, or went legally through an official checkpoint, they can avoid expedited removal, but will likely get a Notice to Appear in immigration court if they are no longer in status. Advise her to recite the drafted language for showing that she was admitted into the United States.

If the person has a credible fear, then advise her to recite the drafted language for showing a credible fear (*see part IV below*). At this stage, a person could assert both a credible fear and an entry with a visa, etc. At this stage, the individual is sharing that they are from another country to avoid the expedited process.

- **Finally**, if she is undocumented and has not been here for two years, and if she entered without inspection and does not have a credible fear, then advise her to stay silent. This advice mirrors the ILRC red card advice.
- **LPR**: If she is an LPR, advise her to show her green card and say: “I am an LPR and am not subject to expedited removal.”
- **Citizen**: If she is a citizen, advise her to show a copy of her passport or naturalization card, and say: “I am a citizen and am not subject to expedited removal.” (Please note, that while citizens are not required to carry proof of citizenship and are not subject to expedited removal, carrying such documentation may be helpful as citizens might be stopped if expedited removal is expanded to the interior).
- **Legal Status Holder**: If she is a legal status holder (asylum seeker, U-visa applicant, T-visa applicant), advise her to show her proof of legal status (*see III below*) and say, “I am lawfully present and am not subject to expedited removal.”

## II. HOW DOES AN INDIVIDUAL KNOW IF SHE IS IN EXPEDITED REMOVAL?

An immigration officer may not necessarily inform an individual that she is being subjected to expedited removal. Nevertheless, some signs that the government is initiating or attempting to initiate expedited removal proceedings includes:

- The officer asks questions to find out if the person has been living here for at least two years.
- The officer asks whether an individual has a fear of being deported from the U.S. or returned to her home country, this *may* indicate that the individual is in expedited removal. (Note, immigration officers are required to read this language from Form I-867A; however, studies have shown that the vast majority of ICE agents do not).
- The immigration officer provides an individual with a Form I-860, “Notice and Order of Expedited Removal,” which indicates that the individual is in expedited removal proceedings.

### III. SUGGESTED DOCUMENTS TO CARRY TO PROVE TWO-YEARS IN THE U.S.

**General reminders:**

- Advise undocumented individuals and citizens to carry a **photocopy** of their documents with them, NOT the original, as their belongings may be confiscated. However, LPRs and Legal Status Holders should show originals, as they are required to carry a valid and original green card and/or documentation at all times under INA § 264(e).
- Advise all individuals to keep a copy of their documents in a safe place in their home or somewhere where a family member can access them if needed.
- Avoid carrying any documents if they were obtained through or convey false information.

**SUGGESTED DOCUMENTS:**

<b>Undocumented</b>	<p>Generally, documents that show presence for two years, that do not reveal alienage or other information about status. For example, photocopies of:</p> <ul style="list-style-type: none"> <li>• School records for you or children</li> <li>• Birth certificates of children born here</li> <li>• Receipts</li> <li>• Leases</li> <li>• Utility bills</li> <li>• Facebook posts with geotag</li> <li>• Mail or any other documentation with your name dating back two years</li> <li>• Tax returns (if proper ITIN or legitimate social security number used)</li> <li>• Date-stamped photographs in clear U.S. locations</li> </ul>
<b>LPR</b>	Green card
<b>Citizen</b>	<p>Passport or passport card (photocopy)          Naturalization certificate (photocopy)          Certificate of citizenship</p>
<b>Legal Status Holder*</b>	<ul style="list-style-type: none"> <li>• Employment Authorization Document (EAD)</li> <li>• I-94 (entry/exit receipt)</li> <li>• Passport with date of entry stamp and/or visa</li> <li>• Receipt Notice Demonstrating pending application for asylum, U-visa, or T-visa</li> </ul>

*\*An individual is a "Legal Status Holder" if she has a valid and unexpired visa or is seeking asylum, U-visa, or T-visa.*



## IV. SUGGESTED LANGUAGE

### **Asserting Two-Year Presence in the U.S.:**

"I have lived in the United States for more than two years and am not subject to expedited removal."

### **Asserting Entry with Inspection (admitted or paroled):**

"I was admitted or paroled at a checkpoint and I am not subject to expedited removal." Or "I entered with a visa and I am not subject to expedited removal."

### **Asserting Credible Fear:**

"I am afraid of returning to my country of origin and have a right to a credible fear interview with an asylum officer."

### **Asserting LPR Status:**

"I am a Legal Permanent Resident and am not subject to expedited removal."

### **Asserting Citizenship Status:**

"I am a U.S. citizen and am not subject to expedited removal."

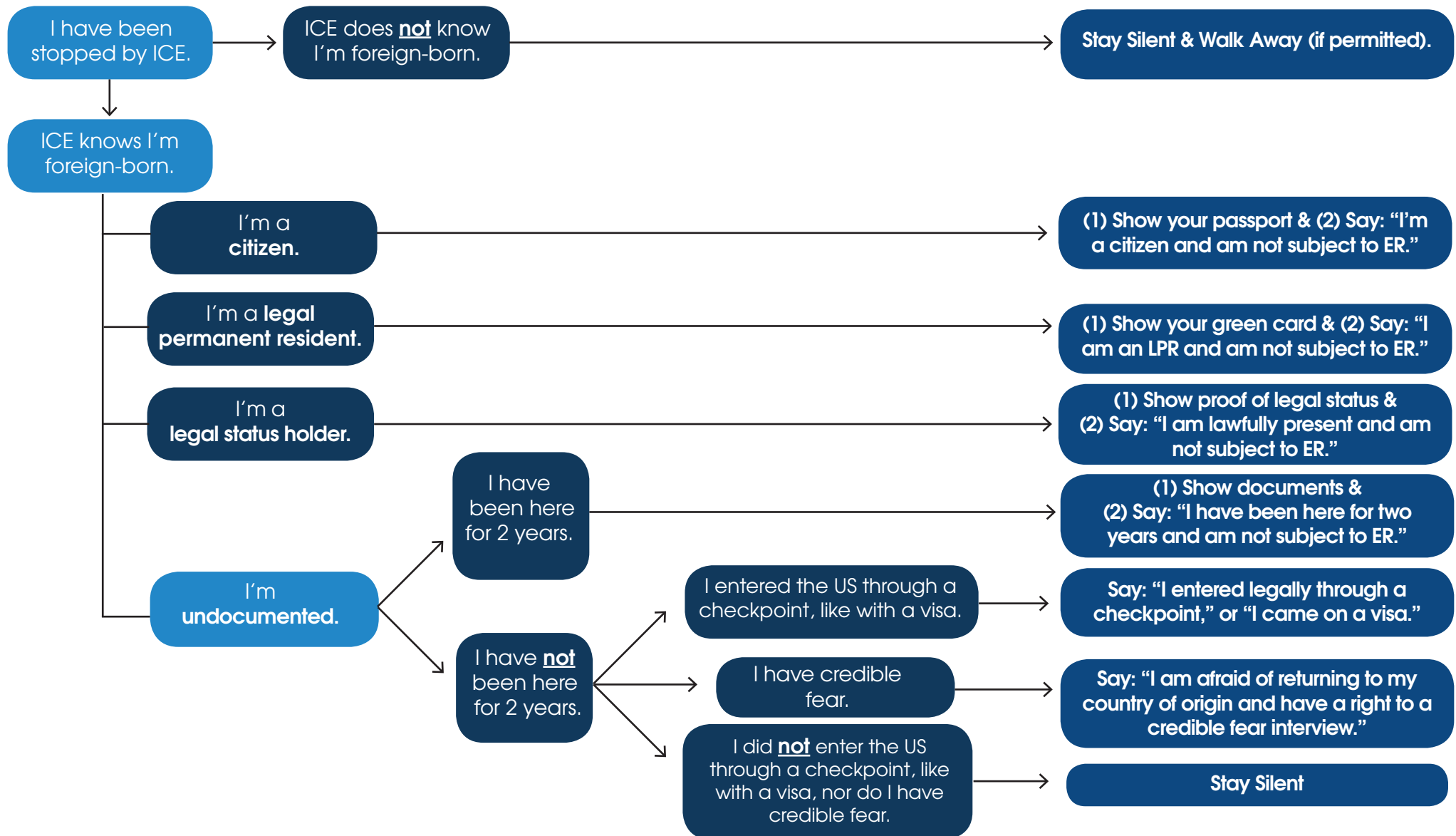
### **Asserting Legal Status Holder:**

"I am lawfully present and am not subject to expedited removal."

***Reminder:** Unaccompanied minors are not subject to expedited removal. If a child meets the definition for an unaccompanied child, DHS cannot remove them through this procedure.*

# NAVIGATING EXPEDITED REMOVAL

This flow chart is designed to be used by legal services practitioners and know your rights presenters. Practitioners and presenters may consider sharing the flow chart with impacted community members, but only after the presenter/practitioner has reviewed the flow chart with the impacted community member



# KNOW YOUR RIGHTS!

Carry this card with you in your purse or wallet.

Keep a copy of this card in your home.

Practice exercising your rights.

STAPLE CARD  
IN THIS SPACE

This red card explains the constitutional rights of everyone in the United States, regardless of immigration status. The card explains these basic rights in various languages and in English. It can be presented to an immigration agent to show you are exercising your rights.

## Basic Rights:

- The right to remain silent: do not answer any questions or provide personal information.
- The right to be represented by an attorney.
- The right to a legal process.

## At Home:

- Do not open the door: agents cannot enter a home without a search warrant.
- Ask that the search warrant be shown through the window or slid under the door for you to review.

## In Detention:

- Ask for a hearing before an immigration judge.
- Do not sign any document without getting legal advice.
- The right to be represented by an attorney.
- Ask to be released on bond.
- Assert you have lived here for 2 years, if applicable
- Assert you have fear, if applicable

### Have a Family Preparedness Plan in case of detention:

- Keep an immigration attorney's contact information readily available.
- Designate someone to care for your children in your absence.
- Memorize the number of a trusted friend or relative.
- Keep a file of important documents, health information and contacts.

### Your Rights at Work:

- Do not present false documents or provide false information to an immigration agent.
- Do not run away.
- Do not answer any questions or provide personal information.