



# EXPEDITED REMOVAL TOOLKIT

A Guide for Advocates Assisting People Facing

Expanded Expedited Removal

**FEBRUARY 2025**

This guide is intended to be used by immigration advocates and legal service practitioners conducting know-your-rights presentations or individual consultations to noncitizens already in the United States. It is not intended to provide advice to noncitizens seeking to enter or who have recently arrived in the United States. We hope that this guide will help you assist and counsel people who might be subject to the expanded use of expedited removal. Note that the enforcement landscape is in flux. We will update this resource as needed.

**HEADS UP!** *This toolkit is intended to provide general information and does not take the place of individualized advice. Advocates and practitioners should also check any state immigration-related laws that may also apply.*

## WHAT IS EXPEDITED REMOVAL?

Expedited removal is a process that allows immigration enforcement officers to quickly deport certain people from the United States without providing them an opportunity to speak with an attorney or allowing them to see a judge before being deported.

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 asserts a credible fear of return to their home country. People subject to expedited removal are detained until deported.

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In the past, this process was only applied at or near a port of entry, such as at the borders with Mexico or Canada, or at airports, and to those that had been in the United States less than 14 days. But on January 21, 2025, the Trump Administration expanded the use of expedited removal to cover certain noncitizens anywhere within the United States.

## **WHO MAY BE SUBJECT TO THE EXPEDITED REMOVAL PROCESS?**

A person can be placed in the expedited removal process at a U.S. port of entry if they do not have valid entry documents or if they try to enter the country through fraud or misrepresentation.

Additionally, as of January 21, 2025, expedited removal can be applied to certain noncitizens living **anywhere in the United States** if they:

- 1.** Entered the United States without inspection (ie - were not admitted or paroled), and
- 2.** Cannot show they have been in the United States at least two years.

## **WHO CANNOT BE REMOVED WITH EXPEDITED REMOVAL?**

Any noncitizen who entered the United States with a visa or documentation cannot be removed under this process. Even if they have overstayed their visa, they are entitled to a hearing before an immigration judge. Additionally, anyone who has lived in the United States for two years or more before an enforcement encounter is not subject to expedited removal. Expedited removal does not apply to those that entered the United States as unaccompanied children. Currently, Cuban citizens who arrive by air are exempt from expedited removal.

Other individuals are not subject to expedited removal because they have obtained status which protects them from removal. This includes the following:

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- ▶ U.S. citizens,
- ▶ Lawful permanent residents, and
- ▶ Asylees and refugees.

Additionally, noncitizens who currently have status, such as individuals with Temporary Protected Status (TPS) or nonimmigrant visas, including U visa and T visas, have permission to remain in the United States and should not be subject to expedited removal.

ICE also should not apply expedited removal to noncitizens with pending applications for asylum and adjustment of status. These applications provide authorization to stay in the United States while the application is pending.

Other noncitizens who are in the following situations should argue they should not be placed in the expedited removal process, although the law is less clear in these situations:

- ▶ Noncitizens who currently hold discretionary protection from removal such as DACA, other forms of deferred action, or parole;
- ▶ Noncitizens with other applications for relief pending, such as petitions for U or T visas (Note that there is no formal right to stay in the United States while pursuing these applications.); and
- ▶ Noncitizens currently in removal proceedings.

Noncitizens who have been processed by immigration officers and are awaiting a credible fear interview should not be placed in a new expedited removal process as they are already subject to an expedited removal order.

## **HOW WILL SOMEONE KNOW IF THEY ARE IN THE EXPEDITED REMOVAL PROCESS?**

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Noncitizens should assume that any encounter with an immigration officer may result in an attempt to apply expedited removal, and the officer will likely ask questions to see if a person meets the criteria. Immigration officers usually do not tell someone that they are being placed in the expedited removal process, so it can be difficult to know for sure. Officers may begin to ask individuals if they have been in the United States for at least two years, which is a good sign that they are considering expedited removal.

A person will only know for certain that they are in the expedited removal process if the officer gives them a Form I-860, “Notice and Order of Expedited Removal,” but at that point it may be too late to stop the process. For this reason, noncitizens should assume that any encounter with an immigration officer may be the beginning of the expedited removal process.

## **IF SOMEONE DOES MEET THE CRITERIA FOR EXPEDITED REMOVAL, IS THERE ANY WAY TO STOP IT?**

In most cases, expedited removal orders cannot be appealed. However, noncitizens who claim a fear of returning to their country of origin or an intent to apply for asylum should be taken out of the expedited removal process if they demonstrate a “credible fear” of persecution or torture.

Anyone who can argue they do not meet the criteria for expedited removal (for example, they have lived in the U.S. a long time or entered with a visa), might need to assert this information in an ICE encounter. We will discuss this below.

Individuals who do meet the expedited removal criteria and are getting processed for removal should assert their fear of returning to their home country with the immigration officer. They should not wait to be asked whether they have a fear. Once a noncitizen claims a fear of return, the immigration officer will refer the noncitizen for a credible fear interview with an asylum officer. If the noncitizen passes the credible fear interview, the expedited removal order issued against them will be

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withdrawn and they will be placed in removal proceedings before an immigration judge.

The law indicates that a person waiting for their credible fear interview must be detained. They will have an expedited removal order that will be withdrawn only if they pass their credible fear interview. For this reason, noncitizens who have been in the United States for two years or more, or who entered the United States with a visa or other valid entry document, should assert those arguments first to avoid being subject to expanded expedited removal. In the section below, we provide more detail about how and when to assert a credible fear in the expedited removal process.

## ADVISING NONCITIZENS ABOUT WHAT TO SAY

### **SHOULD A NONCITIZEN REMAIN SILENT?**

Silence is golden. The [ILRC's Red Cards](#) help individuals exercise their right to remain silent during an encounter with an immigration or law enforcement officer. In general, if someone is stopped by an immigration officer, advise them to stay silent until either they know for certain that the officer already has evidence the person is foreign born, or they are arrested and have decided it is best to provide information to avoid the expedited removal process. If the person is not being arrested, advise them to stay silent and, if allowed, to walk away.

Silence is the best defense in any encounter where the ICE officer does not already have information about a person's identity and nationality. Some examples of when to stay silent:

- ▶ ICE knocks on the door of a person's residence. They do not have to open the door and can remain silent. (ICE can only enter if they have a judicially signed warrant.)
- ▶ ICE begins asking questions of random individuals out in public where they do not already know information about the people they are stopping. For instance,

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they begin asking questions at a market, outside of an apartment building, or at a bus stop.

- ICE questions individuals detained in a state's criminal system.

**REMEMBER:** *If you are at home or in a private space, you do not have to open the door unless the officer has a judicial warrant. You can exercise your right to stay silent.*

### **WHEN SHOULD THE NONCITIZEN NOT REMAIN SILENT?**

If the person is encountered out in public, the individual will have to determine whether or not to remain silent during an encounter. If the officer already has evidence the person is foreign born, or the person is getting arrested regardless, an individual might choose to provide more information to avoid expedited removal. Some examples of when the immigration officer already has evidence the person is foreign born include:

- ICE agents approach a specific person to arrest them outside the home because of an outstanding removal order and address the person by name.
- ICE agents approach a specific person, addressing them by name, at a courthouse. The individual has applications on file or history with immigration, and they are approached because of a recent arrest by law enforcement.
- ICE agents interview a specific person at an already-scheduled check in. The individual has had prior encounters with immigration or filed applications with USCIS that provide their country of origin.

In this context, what advice to give depends on how the individual entered the United States and their current immigration situation. Generally, undocumented individuals should exercise their right to remain silent so that immigration officers do not get information about their place of birth from the officer's questioning. But if the officer already has information about the individual, or if they are getting arrested, a

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person might choose to speak to show they are not subject to expedited removal. A person might be able to give enough information to avoid expedited removal without revealing they were born in another country.

### **WHAT INFORMATION SHOULD THE NONCITIZEN PROVIDE TO AVOID EXPEDITED REMOVAL?**

It is important to advise an individual based first on their length of presence in the United States, then on how they entered the country and whether they have a credible fear. If none of these exceptions apply, the person should continue to remain silent. This priority of questions and advice is designed to help an undocumented individual avoid expedited removal while not revealing more information than necessary about their alienage, status, or other identifying information.

**DETERMINING THE BEST STRATEGY:** *If a noncitizen chooses to break silence in order to avoid a possible expedited removal, the best strategy, if available, is to respond with evidence that the person has resided in the United States for two years or more. This is because a person could provide this evidence without disclosing that they are foreign born. Revealing certain information could lead an immigration officer to initiate removal proceedings against them. For example, admitting that you entered with inspection requires explaining you came from somewhere else. Likewise revealing that you want to apply for asylum or have a credible fear of return to another country indicates that you are from another country.*

#### **1. FIRST DEFENSE: REMAIN SILENT**

As discussed above, the first defense in an enforcement encounter is to remain silent. See <https://www.ilrc.org/resources/community/know-your-rights-toolkit>. Regardless of status, everyone should exercise this right. We want to reinforce and normalize exercising our rights to push back against increased and unjust enforcement.

#### **2. SECOND DEFENSE: TWO YEARS IN THE U.S.**

If the person has been in the United States for two years, advise them to say, “I have

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lived in the United States for more than two years and am not subject to expedited removal,” and show documents proving two-years of presence in the U.S.

Regardless of status, individuals can use this strategy as a defense without revealing information about their nationality, status or manner of entry.

### **3. THIRD DEFENSE: ENTERED WITH INSPECTION, PROPER DOCUMENTS, OR CURRENTLY HAS STATUS.**

#### **A. Admitted to the U.S. or Paroled**

If the individual is undocumented and has not been here for two years, ask how they entered the United States.

- ▶ If they entered with a visa or other type of valid entry document, they can avoid expedited removal, but will likely get a Notice to Appear in immigration court if they are no longer in status. Advise individuals in this situation to say, “I was admitted into the U.S. and I am not subject to expedited removal,” and show documents proving they entered the United States with a valid entry document, such as a visa.
- ▶ If they were paroled into the United States, they can also avoid expedited removal, although they are at risk of receiving a Notice to Appear in immigration court. Individuals in active parole status are also at risk of having their parole terminated. Advise individuals in this situation to say, “I was paroled into the U.S. and I am not subject to expedited removal.” [Note that noncitizens who were granted parole after entry, including those granted parole-in-place, should also assert their parole as an exception to expedited removal, however, the argument may not be as strong.]

#### **B. Currently in Status**

Everyone should exercise their right to stay silent and walk away, even those with status. Once the decision is made to break silence, those with status can show proof



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of that status.

- **U.S. Citizen:** If the person is a U.S. citizen, advise them to say: “I am a citizen and am not subject to expedited removal.” Please note: While citizens are not required to carry proof of citizenship and are not subject to expedited removal, carrying such documentation may help them avoid being detained or processed for expedited removal.
- **LPR:** If the person is an LPR, advise them to show their permanent resident card and say: “I am a permanent resident and am not subject to expedited removal.”
- **Asylee or Refugee:** If the person is an asylee or refugee, advise them to show proof of their status and say: “I am an asylee [or refugee] and am not subject to expedited removal.”
- **Individuals with Legal Status:** If the person currently has valid immigration status (for example, a U or T visa or Temporary Protected Status), advise them to show proof of that status and say, “I currently have \_\_\_\_\_ status and am not subject to expedited removal.”

**Special Situations:** Many undocumented individuals might already be in process or have some protection from removal. In this situation, a person might assert that they are already in process or have protection in the United States in an effort to avoid expedited removal. If they have lived in the United States for more than two years, they should also make this assertion to the officer.

- **Pending immigration applications:** If the person currently has an application for immigration status pending that provides them permission to remain in the United States (such as an application for adjustment of status or asylum), advise them to show a copy of the USCIS or EOIR application receipt notice and they should say, “I have a pending \_\_\_\_\_ application and am not subject to expedited removal.”

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- **Currently in removal proceedings:** If the person currently has a case pending before the immigration court, advise them to show a copy of their Notice to Appear, notice of upcoming hearing, or credible fear determination/worksheet and they should say, “I am currently in removal proceedings and should not be subject to expedited removal.”

**A NOTE ABOUT JURISDICTION:** *Advocates should argue that jurisdiction has vested with the immigration court and ICE does not have jurisdiction to issue an expedited removal order. In this situation, ICE would have to first file a motion to dismiss proceedings with the court and allow the respondent the opportunity to object. Only if the judge granted ICE’s motion over respondent’s objection would ICE be able to initiate the expedited removal process.*

**A NOTE FOR ASYLUM SEEKERS:** *If the person is pursuing asylum in immigration court, they should also say they have a fear of return and have already filed for asylum, where applicable.*

- **Other Authorizations to Stay:** If the government has granted the noncitizen authorization to remain in the United States, such as DACA, other forms of deferred action, or parole-in-place, they should show proof of that permission to stay and say, “I have been granted \_\_\_\_\_ giving me permission to remain in the U.S. and should not be subject to expedited removal.” Note that these situations might depend on the discretion of ICE and could be vulnerable. Individuals with pending applications, such as petitions for U visas or T visas, should assert that they have a case to remain, but this does not offer full protection if they otherwise fit the criteria for expedited removal.
- **Outstanding Order: *WARNING!*** If the person has a prior order of removal, deportation, or exclusion, they are at risk of enforcement of the existing order, which includes detention and removal with no right to a hearing. Individuals with a fear of returning to their country of origin should assert that fear to the

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immigration officer. If they do not have a fear of return, then advise them to stay silent. Some people with prior orders now have a new status or protection from removal. They should be ready to show proof that they now have status or permission to stay. Some examples are TPS, U visa, Bona Fide Determination for a pending U visa application (BFD), DACA.

Some people might have been apprehended at or near the border and are still waiting for their credible fear interview. These individuals are already in expedited removal. They should express their fear of return, show any documents that indicate they are awaiting their interview, and say, “I am afraid of returning to my home country and I have a right to a credible fear interview.”

#### **4. FOURTH DEFENSE: FEAR OF RETURN**

If the individual did not enter lawfully, has no status, and has not been in the United States for two years, ask if they have a fear of returning to their country of origin. If they do have a fear, advise them to say, “I am afraid of returning to my country of origin and have a right to a credible fear interview with an asylum officer.”

As explained above, a person asserting a fear of return will be scheduled for a credible fear interview and likely detained during the process. Expressing a fear of return does not exempt a person from the expedited removal process. Expedited removal only stops if they are found to have a credible fear. It is important that the person share that they are afraid to return, even if the officer does not ask.

#### **5. FIFTH DEFENSE: REMAIN SILENT**

If the individual is undocumented and has not been here for two years, and if they entered without inspection and do not have a credible fear, provide them an [ILRC Red Card](#) and advise them to exercise their right to stay silent. They may show the red card, or say “I am exercising my constitutional right to remain silent. Can I walk away?”

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## SUGGESTED DOCUMENTS TO CARRY

### **GENERAL REMINDERS:**

- ▶ Advise individuals to carry a photocopy of their documents with them, NOT the original, as their belongings may be confiscated. However, certain noncitizens, such as LPRs, should show originals, as they are required to carry their original permanent resident card at all times under INA § 264(e).
- ▶ Advise all individuals to keep additional copies 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.
- ▶ Avoid carrying information that identifies place of birth/country of origin, unless you need the document to show lawful admission or status. Even so, some may choose to leave these documents and copies at home, ready to produce if needed. Lawful permanent residents are required to carry their LPR card.

### **SUGGESTED DOCUMENTS TO SHOW TWO YEARS IN THE U.S.**

Generally, documents that show presence in the United States for two years, but ***do not reveal alienage or other information about status are best***. For example, photocopies of:

- ▶ School records for you or children
- ▶ Records of medical/doctor appointments
- ▶ Receipts
- ▶ Leases

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- Utility bills
- Paystubs (if legitimate social security number used)
- Facebook posts with geotag
- Mail or any other documentation with your name dating back two years
- Tax returns (if proper ITIN or legitimate social security number used)
- Date-stamped photographs in clear U.S. locations

### ***SUGGESTED DOCUMENTS TO SHOW ENTRY WITH VALID DOCUMENTS***

- I-94 (entry/exit receipt)
- Parole document
- Border Crossing Card
- Passport with visa and/or entry stamp

### ***SUGGESTED DOCUMENTS TO SHOW OTHER PERMISSION TO BE IN THE U.S. OR APPLICATION IN PROCESS***

- Employment Authorization Document (EAD)
- I-94 (entry/exit receipt)
- Parole document
- USCIS Approval Notice showing a grant of deferred action
- USCIS Receipt Notice demonstrating pending application for relief
- Notice to Appear or Notice of Hearing (with future hearing date)
- Credible Fear Determination/Worksheet (Form I-870)

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### **SUGGESTED DOCUMENTS TO SHOW LEGAL STATUS**

- ▶ Employment Authorization Document (EAD)
- ▶ I-94 (entry/exit receipt)
- ▶ Passport with visa or entry stamp
- ▶ USCIS Approval Notice showing the status granted

### **ASYLEE OR REFUGEE**

- ▶ I-94 (entry/exit receipt) showing refugee admission or asylum granted
- ▶ Employment Authorization Document (EAD) reflecting refugee or asylum granted categories
- ▶ Immigration judge order granting asylum

### **LPR**

- ▶ Permanent resident card (Form I-551)
- ▶ ADIT stamp (serving as temporary proof of LPR status)

### **U.S. CITIZEN (NOT REQUIRED TO SHOW DOCUMENTS)**

- ▶ U.S. Passport or passport card (photocopy)
- ▶ Naturalization certificate (photocopy)
- ▶ U.S. Certificate of citizenship
- ▶ U.S. Birth Certificate



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## LEGAL SOURCES FOR ADVOCATES

The law governing expedited removal can be found at INA § 235(b)(1) (8 USC § 1225(b)(1)) and 8 CFR § 235.3(b).

You can review the Department of Homeland Security’s notice about the expansion of expedited removal into the interior here: <https://federalregister.gov/d/2025-01720>, as well as further guidance about the implementation of that notice: [https://www.dhs.gov/sites/default/files/2025-01/25\\_0123\\_er-and-parole-guidance.pdf](https://www.dhs.gov/sites/default/files/2025-01/25_0123_er-and-parole-guidance.pdf).

Here are additional resources with more information about expedited removal:

<https://immigrationlitigation.org/wp-content/uploads/2025/02/25.02.07-Expedited-Removal.pdf>

[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)

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