EXPEDITED REMOVAL AND UNACCOMPANIED CHILDREN: AN FAQ[1]

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[1] Publication of the Children's Immigration Law Academy of the American Bar Association (CILA), National Immigration Project, and the Immigrant Legal Resource Center (ILRC). The authors of this resource are Dalia Castillo-Granados, CILA Director, Rebecca Scholtz, National Immigration Project Senior Staff Attorney, Rachel Prandini, ILRC Managing Attorney, and Miosotti Tenecora, ILRC Staff Attorney. The authors would like to thank the following individuals for their thoughtful contributions to this resource: Victoria Neilson, Supervising Attorney, National Immigration Project, Ann-Renee Rubia and Metyia Phillips, National Immigration Project legal interns, and Kate Mahoney and Cori Hash, Senior Staff Attorneys, ILRC. This resource is not a substitute for independent legal advice provided by legal counsel familiar with a client's case.

The Trump administration's January 2025 expansion of expedited removal to people residing in the interior of the United States has raised concerns about whether the government could try to apply this summary removal process to young people who entered the country as unaccompanied children (UCs) but no longer meet the definition. This resource answers common questions about expedited removal and its application to children and offers arguments against its application to young people who were processed as UCs and young people with approved special immigrant juvenile status (SIJS), should the government attempt to apply it to those groups.

A. What is expedited removal?

Expedited removal is a statutory procedure that allows immigration officials to summarily remove certain inadmissible noncitizens with very little process. Congress created expedited removal through the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, which went into effect in 1997.[2] The law on expedited removal is set forth in section 235(b)(1) of the Immigration and Nationality Act (INA). The statute allows the Department of Homeland Security (DHS) to apply expedited removal to certain noncitizens, described further below, who are inadmissible under INA § 212(a)(6)(C) (fraud or misrepresentation) or § 212(a)(7) (lack of valid entry documents).[3]

Although expedited removal is a fast-track removal process, there are limited procedural safeguards for those who express a fear of persecution or an intent to apply for asylum. These noncitizens must be referred to an asylum officer with U.S. Citizenship and Immigration Services (USCIS) for a "credible fear interview" (CFI).[4] If the asylum officer determines that the noncitizen has established a credible fear of persecution or torture, the case is referred for full removal proceedings under INA § 240 before an immigration judge (IJ).[5] If the officer finds no credible fear and an IJ affirms that determination upon review,[6] the expedited removal order is final and may be reviewed only through the narrow provisions in 8 U.S.C. § 1252(e), which limit review to questions of whether the petitioner is a noncitizen, whether the petitioner was ordered removed, and whether the petitioner possesses lawful permanent resident status, refugee status, or asylee status.[7]

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[2] *See* IIRIRA, Pub. L. No. 104-208, div. C, § 302, 110 Stat. 3009-546, 3009-579 (1996) (enacting expedited removal provisions); INA § 235(b)(1) (codifying expedited removal); *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312 (Mar. 6, 1997) (implementing regulations); 8 CFR § 235.3 (procedures for noncitizens subject to expedited removal); 8 CFR § 235.15 (expedited removal procedures for noncitizens subject to "Securing the Border" Presidential Proclamation).

[3] INA § 235(b)(1)(A)(i).

[4] *Id.* § 235(b)(1)(A)(ii); 8 CFR §§ 208.30, 1208.30.

[5] INA § 235(b)(1)(B)(ii); 8 CFR §§ 208.30(f), 208.90, 1208.3(f). Alternatively, USCIS may retain jurisdiction over the asylum application for an Asylum Merits Interview (AMI); however no AMIs have taken place under the Trump administration and it is unlikely this administration will reimplement this Biden-era procedure. *See* USCIS, *Asylum Merits Interview with USCIS: Processing After a Positive Credible Fear Determination*, https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/asylum-merits-interview-with-uscis-processing-after-a-positive-credible-fear-determination. Note noncitizens placed into full removal proceedings after being found to have a credible fear of persecution are not eligible for an IJ bond hearing and may only be released through parole in DHS's exercise of discretion. *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019); ICE, *Parole of Arriving Aliens Found to Have a Credible FearofPersecution or Torture* (Jan. 10, 2010), https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_aliens_found_credible_fear.pdf.

[6] INA § 235(b)(1)(B)(iii); 8 CFR §§ 208.30(g), 1208.30(g). If, on the other hand, the IJ overturns USCIS's negative credible fear finding, the noncitizen is placed into INA § 240 removal proceedings.

[7] 8 U.S.C. § 1252(e)(2); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 103 (2020) ("But IIRIRA limits the review that a federal court may conduct on a petition for a writ of habeas corpus. 8 U.S.C. § 1252(e)(2). In particular, courts may not review 'the determination' that an applicant lacks a credible fear of persecution. § 1252(a)(2)(A)(iii)").

Additionally, noncitizens subject to expedited removal are typically detained throughout the process. By statute, they have no opportunity to seek a bond before an IJ and "shall be detained" unless DHS exercises its discretion to parole them.[8]

B. How has expedited removal been applied over time, and to whom does it apply now?

The statute authorizes DHS to apply expedited removal to two categories of noncitizens. First, immigration officers may summarily remove a noncitizen who "is arriving" and who is inadmissible under INA § 212(a)(6)(C) or § 212(a)(7).[9] Second, the "designation provision" as it is sometimes called allows the Secretary of Homeland Security to expand expedited removal to additional classes of noncitizens inadmissible under one of the same two grounds who (1) have not been admitted or paroled, and (2) cannot establish two years of continuous physical presence in the United States prior to the date of the determination of inadmissibility.[10]

When the agency first implemented the expedited removal statute in 1997, it only applied it to "arriving" noncitizens encountered at ports of entry.[11] But starting in 2002, the agency began broadening the scope of expedited removal through the designation provision, designating additional classes of noncitizens who could be subjected to expedited removal through Federal Register notices.[12] For most of the expedited removal statute's existence, the 2004 designation governed. Under that designation, DHS could subject noncitizens to expedited removal who were not admitted or paroled, who were encountered within 100 miles of a U.S. land border, and who could not show 14 days of continuous presence.[13]

On January 24, 2025, DHS issued a new designation to apply expedited removal "to the fullest extent authorized by law"—rendering amenable to expedited removal any noncitizen who (1) has not been admitted or paroled, (2) is inadmissible for fraud/misrepresentation or lack of valid entry documents, and

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[8] INA § 235(b)(1)(B)(iii)(IV) ("Any [noncitizen] subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed."); *Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018) (holding that § 1225(b) "mandate[s] detention of applicants for admission until certain proceedings have concluded" and confirming that detention under both § 1225(b)(1) and (b)(2) is mandatory).

[9] INA § 235(b)(1)(A)(i) (1996).

[10] INA § 235(b)(1)(A)(iii). The statute, as originally enacted in 1996, vested this authority in the Attorney General. *Id*. However, the Homeland Security Act of 2002 transferred the relevant functions to the Secretary of Homeland Security, effective Mar. 1, 2003. Pub. L. No. 107-296, §§ 441, 1517, 116 Stat. 2135, 2192, 2311 (2002).

[11] *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312 (Mar. 6, 1997).

[12] *Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act*, 67 Fed. Reg. 68924 (Nov. 13, 2002) (expanding to certain noncitizens arriving by sea who could not establish two years of continuous physical presence); *Designating Aliens for Expedited Removal*, 69 Fed. Reg. 48877 (Aug. 11, 2004) (expanding to noncitizens who have not been admitted or paroled and who are encountered within 100 miles of a land border and cannot establish fourteen days of continuous physical presence prior to the encounter); *Designating Aliens for Expedited Removal*, 84 Fed. Reg. 35409 (July 23, 2019) (expanding nationwide to all noncitizens unable to demonstrate two years of continuous physical presence, a designation that was challenged in *Make the Rd. New York v. McAleenan*, 405 F. Supp. 3d 1 (D.D.C. 2019), *rev'd and remanded sub nom. Make The Rd. New York v. Wolf*, 962 F.3d 612 (D.C. Cir. 2020)); *Rescission of July 23, 2019 Designation of Aliens Subject to Expedited Removal*, 87 Fed. Reg. 16022 (Mar. 21, 2022) (rescinding the 2019 expansion and restoring the previous designation; DHS explained that pursuant to President Biden's Executive Order 14010 the Secretary determined the 2019 designation was "inadvisable at this time" and that limiting coverage to the previous designations better aligned with statutory authority and enforcement priorities).

[13] *Designating Aliens for Expedited Removal*, 69 Fed. Reg. 48877 (Aug. 11, 2004).

(3) is unable to demonstrate two years of continuous physical presence prior to the date of the determination of inadmissibility.[14]

That same week, DHS also issued a memorandum directing Immigration and Customs Enforcement (ICE), Customs and Border Patrol (CBP), and USCIS to take "all steps necessary" to operationalize the expedited removal expansion, including terminating noncitizens' ongoing INA § 240 proceedings and parole status where "appropriate."[15] This directive is known as the "Huffman Memorandum." Additionally, leaked ICE guidance dated February 18, 2025 revealed that ICE Enforcement and Removal Operations (ERO) officers had been instructed to consider expedited removal for broad categories of noncitizens, including noncitizens previously paroled into the United States at a port of entry, stating that there is "no time limit on the ability to process such [noncitizens] for ER."[16]

As of this resource's publication, the 2025 designation and aspects of the Huffman Memorandum and February 2025 ICE guidance are blocked from implementation due to ongoing litigation, as discussed in further detail below.[17] **As a result, expedited removal currently applies to (1) "arriving" noncitizens, (2) noncitizens who arrived by sea within the last two years, and (3) noncitizens who have not been admitted or paroled and were encountered by DHS within 100 miles of the border and 14 days of entry.[18]**

For more information on the history and process of expedited removal, see the National Immigration Litigation Alliance (NILA) practice advisory on this topic,[19] and for litigation updates, follow Just Security's litigation tracker.[20]

C. What are the emerging issues in expedited removal?

Several significant legal and policy changes and disputes have emerged in the wake of DHS's January 2025 nationwide expansion of expedited removal.

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[14] *Designation of Aliens Subject to Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). Note that this went into effect on January 21, 2025.

[15] DHS, *Guidance Regarding How to Exercise Enforcement Discretion* (Jan. 23, 2025), https://www.dhs.gov/sites/default/files/2025-01/25_0123_er-and-parole-guidance.pdf.

[16] https://fingfx.thomsonreuters.com/gfx/legaldocs/gkpljxxoqpb/ICE_email_Reuters.pdf.

[17] *Make the Rd. New York v. Noem*, No. 1:25-cv-00190, 2025 WL 2494908 (D.D.C. Aug. 29, 2025) (issuing an Administrative Procedure Act (APA) stay of DHS's 2025 expedited removal designation and the Huffman Memorandum); *Make the Rd. New York v. Noem*, 2025 WL 2576701 (D.D.C. Sept. 5, 2025) (denying the government's motion to stay the August 29, 2025 order while appeal is pending); *CHIRLA v. Noem*, No. 1:25-cv-00872, 2025 WL 2192986 (D.D.C. Aug. 1, 2025) (issuing a stay under the APA of the Huffman Memorandum and the February 18 ICE directive); *CHIRLA v. Noem*, No. 25-5289, 2025 WL 2649100 (D.C. Cir. Sept. 12, 2025) (denying the government's motion to stay the August 1, 2025 order while the appeal is pending).

[18] Because implementation of DHS's January 2025 expedited removal designation has been stayed, the prior 2002 (maritime) and 2004 (land-border) designations remain operative. *See* 67 Fed. Reg. 68924 (Nov. 13, 2002); 69 Fed. Reg. 48877 (Aug. 11, 2004).

[19] NILA, *Practice Advisory, Everything Expedited Removal* (Feb. 7, 2025), https://immigrationlitigation.org/wp-content/uploads/2025/04/25.02.28-ER-FINALx.pdf.

[20] Just Security, *Litigation Tracker: Legal Challenges to Trump Administration Actions,* https://www.justsecurity.org/107087/tracker-litigation-legal-challenges-trump-administration.

1. Ongoing Litigation

ALERT: Litigation in this area is ongoing, with frequent developments. The information provided below was current as of the date of this advisory's issuance; practitioners should review the court dockets in the below cases for the latest updates.

Two lawsuits challenging the 2025 expansion of expedited removal have resulted in favorable preliminary district court decisions. The first, *Make the Road New York v. Noem,* No. 1:25-cv-00190 (D.D.C. filed Jan. 22, 2025), challenges the January 2025 expansion to certain inadmissible noncitizens who have not been admitted or paroled and cannot demonstrate two years of continuous physical presence. On August 29, 2025, the district court issued a stay under the Administrative Procedure Act (APA), blocking the 2025 expansion while the lawsuit proceeds.[21] The district court held that the January 2025 expansion likely violates the Due Process Clause because it fails to afford noncitizens subject to it a meaningful opportunity to be heard.[22] Thus, as of this resource's publication, the 2004 designation is in effect, meaning that DHS may subject to expedited removal noncitizens who have not been admitted or paroled only if they were encountered by DHS within 100 miles of the border and 14 days of entry.[23]

The second lawsuit, *CHIRLA v. Noem*, No. 1:25-cv-00872 (D.D.C. filed Mar. 24, 2025), challenges the application of expedited removal to noncitizens paroled into the United States at a port of entry. On August 1, 2025, the district court issued a stay of the policies that had permitted DHS to apply expedited removal to paroled noncitizens, thus temporarily preventing DHS from applying expedited removal to noncitizens who had been paroled at a port of entry while the litigation continued.[24] After a brief period in which the August 1 order was partially stayed by the D.C. Circuit,[25] on September 12, 2025, the D.C. Circuit restored in full the district court's decision staying the 2025 policies that had permitted DHS to subject to expedited removal noncitizens previously paroled into the United States.[26] Thus, as of this resource's publication, the *CHIRLA* decision prohibits DHS from subjecting noncitizens to expedited removal who were paroled into the United States at a port of entry, but the case is still ongoing at the

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[21] *Make the Rd. New York v. Noem,* No. 1:25-cv-00190, 2025 WL 2494908 (D.D.C. Aug. 29, 2025). Note that DHS previously tried to expand expedited removal in 2019. *Designating Aliens for Expedited Removal*, 84 Fed. Reg. 35409 (July 23, 2019) (expanding nationwide to all noncitizens unable to demonstrate two years of continuous physical presence). This 2019 designation was challenged in *Make the Rd. New York v. McAleenan*, 405 F. Supp. 3d 1 (D.D.C. 2019), *rev'd and remanded sub nom. Make the Rd. New York v. Wolf*, 962 F.3d 612 (D.C. Cir. 2020). However, the district court addressed the prior litigation and noted that "Make the Road's due process claim here is that the designation falls outside of 'constitutional bounds,' so it is not barred by [the D.C. circuit court] decision." *Id*. at 9. The government's appeal of the court's August 29, 2025 APA stay decision remains pending with the D.C. Circuit as of the date of this resource's issuance. *Make the Rd. N.Y. v. Noem*, No. 25-5320 (D.C. Cir. filed Sept. 5, 2025).

[22] *Make the Rd. New York v. Noem,* No. 1:25-cv-00190, 2025 WL 2494908 (D.D.C. Aug. 29, 2025).

[23] Note that although currently expedited removal applies to noncitizens who were apprehended within 100 miles of the border and within 14 days of entry per the 2004 designation, DHS is interpreting the first border encounter (not the current border encounter) as controlling, meaning the 14-day clock froze at that first border contact and does not restart at each later encounter. As a result, per DHS's interpretation, expedited removal could apply to a noncitizen who was encountered within 100 miles of a border and has now been in the United States much longer than 14 days.

[24] *CHIRLA v. Noem*, No. 1:25-cv-00872, 2025 WL 2192986 (D.D.C. Aug. 1, 2025) (issuing an APA stay of the Huffman Memorandum, the February 18 ICE directive, and the DHS notice *Termination of Parole Process for Cubans, Haitians, Nicaraguans, and Venezuelans*, 90 Fed. Reg. 13611 (Mar. 25, 2025)); *CHIRLA v. Noem*, 2025 WL 2336415 (D.D.C. Aug. 13, 2025) (denying government's motion for a stay of the Aug. 1, 2025 order while pending appeal).

[25] *CHIRLA v. Noem*, No. 25-5289 (D.C. Cir. Aug. 18, 2025) (granting a partial administrative stay).

[26] *CHIRLA v. Noem*, No. 25-5289, 2025 WL 2649100 (D.C. Cir. Sept. 12, 2025) (denying the government's motion to stay the August 1, 2025 order while pending appeal).

district court and the court of appeals. For more information about this litigation, see the National Immigration Project's practice alert.[27]

2. ICE Enforcement at Immigration Courts

Around May 2025, DHS began widespread use of a new tactic of targeting noncitizens currently in immigration court removal proceedings for expedited removal.[28] Attorneys representing DHS in immigration court would make oral motions to dismiss the case during noncitizens' immigration court hearings, in order to place them into expedited removal. Often, the noncitizen would not understand the purpose behind the dismissal until they had left the courtroom or were exiting the building, at which time ICE agents would arrest and detain them and then subject them to expedited removal.[29] On May 30, 2025, an email was sent to Assistant Chief Immigration Judges (ACIJs) directing IJs to allow OPLA to move to dismiss orally, to decide from the bench the motion without written briefing or a 10-day response period, and to issue oral decisions the same day that testimony and argument concluded, among other things.[30]

This immigration enforcement tactic spurred numerous lawsuits from immigrant advocates alleging that the courthouse arrests were unlawful and reflected improper collusion between DHS and the Department of Justice (DOJ).[31] On September 12, 2025, a district court in *African Communities Together v. Lyons*, No. 1:25-cv-6366 (S.D.N.Y. Sept. 12, 2025), issued an APA stay of the May 30 EOIR email in immigration proceedings conducted in Manhattan and the Bronx, but denied the request to stay the ICE courthouse arrest policies. On September 23, 2025, EOIR issued a memorandum officially withdrawing the May 30 email, claiming that it was never EOIR policy.[32]

For more information and guidance on how to defend noncitizens subjected to these tactics, which, as of the date of this resource, continue to be used by ICE, see the National Immigration Project's practice alert on this subject, which links to a template opposition to a DHS motion to dismiss to pursue expedited removal.[33]

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[27] National Immigration Project, *Practice Alert: Guidance on CHIRLA v. Noem Order (Expedited Removal)* (Oct. 3, 2025), https://nipnlg.org/work/resources/practice-alert-guidance-chirla-v-noem-order-expedited-removal.

[28] Ted Hesson & Kristina Cooke, *ICE Arrests Migrants at Courthouses, Opens Door to Fast-Track Deportations*, Reuters (May 23, 2025), https://www.reuters.com/world/us/ice-arrests-migrants-courthouses-opens-door-fast-track-deportations-2025-05-23/; Ximena Bustillo, *ICE's Novel Strategy Allows for More Arrests from Inside Immigration Courts*, NPR (June 12, 2025), https://www.npr.org/2025/06/12/nx-s1-5409403/trump-immigration-courts-arrests; ASAP, *ICE Is Making Arrests in Immigration Court—*
What to Know (Aug. 6, 2025), https://asaptogether.org/en/detained-at-immigration-court/.

[29] Note that DHS sometimes detains noncitizens even after an immigration judge denies DHS's motion to dismiss § 240 proceedings and nonetheless seeks to apply expedited removal to them while those proceedings remain pending.

[30] *See* American Immigration Lawyers Association (AILA), *Practice Alert: EOIR Guidance to Immigration Judges on Dismissals and Other Adjudications* (June 12, 2025), https://www.aila.org/practice-alert-eoir-guidance-to-immigration-judges-on-dismissals-and-other-adjudications.

[31] *See Immigrant ARC et. al. v. DOJ*, No. 1:25-cv-02279 (D.D.C. filed July 16, 2025); National Immigrant Justice Center (NIJC), *Press Release Unlawful ICE Arrests at Immigration Courthouses Prompt Lawsuit by Advocates and Immigrants* (July 16, 2025), https://immigrantjustice.org/press-release/unlawful-ice-arrests-at-immigration-courthouses-prompt-lawsuit-by-advocates-and-immigrants/; *see also Afr. Communities Together v. Lyons*, No. 1:25-cv-06366, 2025 WL 2246794 (S.D.N.Y. filed Aug. 1, 2025).

[32] EOIR Policy Memorandum (PM) 25-51, https://www.justice.gov/eoir/media/1414836/dl?inline. The memorandum states that IJs should not treat the email as guidance, and that any future policy would come through formal EOIR channels.

[33] National Immigration Project, *Practice Alert: Protecting Noncitizens from Expedited Removal and Immigration Court Arrests* (May 30, 2025), https://nipnlg.org/sites/default/files/2025-05/alert-protecting-noncitizens-er.pdf.

3. USCIS Participation in Expanded Expedited Removal

Around June 2025, asylum seekers with pending affirmative asylum applications began receiving notices from USCIS dismissing their asylum applications claiming the agency lacked jurisdiction because DHS records ostensibly showed that the individual had been placed into expedited removal and issued an expedited removal order.[34] Asylum seekers who received these notices often had no knowledge of any prior expedited removal proceedings, and it was unclear if USCIS had initiated expedited removal proceedings during the course of the asylum application's pendency or if there had been some prior expedited removal process unbeknownst to the noncitizen. Some notices also stated that the noncitizen's fear claim would be considered through the CFI process, while other notices instructed the applicant to contact ICE to schedule a CFI.

USCIS's tactic of placing asylum applicants into expedited removal rather than adjudicating their pending asylum applications is likely the result of a May 2, 2025 delegation of power to USCIS by the DHS Secretary to issue expedited removal orders and conduct other types of immigration enforcement.[35]

D. Can expedited removal be applied to unaccompanied children?

No. Federal law requires that all UCs from noncontiguous countries as well as certain UCs from contiguous countries be placed in regular INA section 240 removal proceedings. As defined in immigration law, an "unaccompanied [noncitizen] child" is a child who: "(A) has no lawful immigration status in the United States; (B) has not attained eighteen years of age; and (C) with respect to whom— (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody."[36] The Trafficking Victims Protection Reauthorization Act (TVPRA) specifies: "Any unaccompanied [noncitizen] child sought to be removed by the Department of Homeland Security, except for an unaccompanied [noncitizen] child from a contiguous country subject to exceptions under subsection (a)(2), shall be— (i) placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a)."[37]

For UCs from contiguous countries (Mexico and Canada), the TVPRA permits DHS officials to, in limited circumstances, allow those children to withdraw their application for admission rather than place them into removal proceedings under INA section 240.[38] But if those limited circumstances do not apply, for example because the child expresses a fear of return or there are trafficking concerns, then DHS must place those children in full removal proceedings as well.[39] In other words, expedited removal is not a permissible option for unaccompanied children from contiguous countries, who must either be placed into

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[34] *See, e.g.*, Priscilla Alvarez, *Exclusive: New Trump Administration Plan Could End Asylum Claims and Speed Deportations for Hundreds of Thousands of Migrants*, CNN (June 25, 2025), https://www.cnn.com/2025/06/25/politics/migrants-asylum-claims-deportations; Ximena Bustillo, *Asylum-Seekers Thought They Were Following the Rules. Now Some Are Told to Start Over*, NPR (Aug. 10, 2025), https://www.npr.org/2025/08/10/nx-s1-5487598/asylum-seekers. A sample USCIS notice can be found here: https://asaptogether.org/media/7HVt4JpJ99ie42W5QUnlGL/USCIS_Notice_of_Dismissal_of_I-589.pdf. The American Immigration Lawyers Association (AILA) is currently collecting examples of this tactic, at https://www.aila.org/library/call-for-examples-affirmative-i-589-dismissed-by-uscis-because-applicant-has-a-prior-expedited-removal-order-form-i-860.

[35] USCIS, Delegation to Director, United States Citizenship and Immigration Services, to Order Expedited Removal and to Enforce Immigration Laws (May 2, 2025), https://www.uscis.gov/sites/default/files/document/legal-docs/Delegation_to_USCIS_for_LE_Authorities_15006_1_1.pdf.

[36] 6 U.S.C. § 279(g)(2).

[37] 8 U.S.C. § 1232(a)(5)(D)(i).

[38] *Id.* § 1232(a)(2)(A)-(B).

[39] *Id.* § 1232(a)(4).

full removal proceedings, or, if certain circumstances apply, may instead be allowed to withdraw their application for admission.[40]

In sum, the law prohibits DHS from placing any unaccompanied child, regardless of their country of origin, into expedited removal proceedings.[41] ICE's own juvenile handbook recognizes that "the TVPRA prohibits ERO from … effecting Expedited Removal … of any UAC."[42]

E. Can expedited removal be applied to individuals now eighteen or over who were previously processed by DHS as UCs?

DHS has long applied expedited removal to children who are apprehended while accompanied by a parent, and no provision of law prohibits DHS from subjecting a person to expedited removal solely because they are under eighteen years of age (though as noted above, DHS is prohibited from subjecting *unaccompanied* children to expedited removal). But what about those whom DHS previously processed as unaccompanied children but who no longer meet the unaccompanied child definition, for example because they turned eighteen? **There are strong arguments, described below, that expedited removal cannot be applied to people whom DHS previously classified as UCs but who no longer meet the definition of an unaccompanied child.**

Specifically, these young people can argue that subjecting them to expedited removal violates the TVPRA's mandate that if DHS wishes to remove a UC, the agency must place them into full removal proceedings. Removal proceedings provide certain rights for the person subject to them, including the right to obtain counsel, the right to apply for any and all forms of immigration relief for which they are eligible, and the right to examine and present evidence, call witnesses, and cross-examine government witnesses.[43] Once removal proceedings are commenced, the IJ has jurisdiction over the case and "shall

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[40] Section 100051 of H.R. 1 appropriates funding to DHS for the removal of certain UCs. The funds are to be used for "permitting" the following categories of UCs to withdraw their application for admission: UCs found at a land border or port of entry who are inadmissible, who have not been a victim of trafficking and there is no credible evidence that they are at risk of trafficking upon return to their home country, and who do not have a fear of returning to their home country. One Big Beautiful Bill Act, H.R. 1, Pub. L. No. 119-21, § 100051(8) (2025). This is squarely at odds with the TVPRA's requirement that all UCs except a limited group of UCs from contiguous countries be placed in INA § 240 removal proceedings. It remains to be seen how this allocation of funding that violates existing federal law will play out. Regardless, this provision applies only to UCs at the border or a port of entry, and does not lead to expedited removal, but rather the withdrawal of their request for admission under INA § 235(a)(4).

[41] *See, e.g.*, *Velasquez-Castillo v. Garland*, 91 F.4th 358, 363 (5th Cir. 2024) (citing *Sanchez v. R.G.L.*, 761 F.3d 495, 500 (5th Cir. 2014) ("Because the children were declared by DHS to be 'unaccompanied alien children', they entered mandatory removal proceedings."); *see also Immigr. Defenders Law Ctr. v. DHS*, No. 21-0395, at *12 (C.D. Cal. Mar. 14, 2025) (noting that "§ 1232(a)(5)(D)(i) entitles '[a]ny unaccompanied alien child' to placement in § 240 proceedings as an unaccompanied child with the full range of protections to which unaccompanied children are entitled, including 'access to counsel' 'to the greatest extent practicable'"); *L.G.M.L. v. Noem*, No. CV 25-2942, 2025 WL 2671690, at *2 (D.D.C. Sept. 18, 2025) (explaining that under the TVPRA, UCs must be placed in removal proceedings, and that "the other removal possibility—which the TVPRA excludes for unaccompanied alien children—is 'expedited removal.'"(internal citations omitted); *Kettlewell v. Noem,* No. CV-25-00491, 2025 WL 2733309, at *4 (D. Ariz. Sept. 25, 2025) (finding that plaintiffs are likely to succeed on their claim that any UC sought to be removed must be placed in removal proceedings under section 240 of the INA, and that in that regard, "the TVPRA is unequivocal").

[42] ICE Enforcement and Removal Operations, *Juvenile and Family Residential Management Unit Field Office, Juvenile Coordinator Handbook*, at 12 (Nov. 2021), https://www.ice.gov/doclib/foia/policy/handbooikFOJC_Nov2021.pdf; *see also id.* at 22.

[43] *See generally* INA § 240(b)(4)(B).

conduct proceedings for deciding the inadmissibility or deportability" of the person.[44] These proceedings typically take several years to adjudicate, particularly for non-detained respondents. If DHS could simply subject UCs to expedited removal once they turn eighteen or once a parent or legal guardian becomes available to care for them, the TVPRA-mandated protection of affording them the right to full removal proceedings would be meaningless for many. Congress required this important safeguard of full removal proceedings with full awareness that children age with the passage of time and that removal proceedings take time to complete. The expedited removal process—which the TVPRA prohibits for UCs—is an alternative removal process to full removal proceedings, not a complementary one. Thus, interpreting the statute to allow DHS to simply change course once a youth no longer meets the definition of an unaccompanied child and apply expedited removal to them would nullify this important statutory right, a right that vests at the time the child is initially determined by DHS to be a UC.

A more technical but equally compelling argument against the application of expedited removal to children processed as UCs is that under the 2004 expedited removal designation which is in effect at the time of this writing, the government can only apply expedited removal to people based on their initial border apprehension. However, at the time that young people were processed as UCs during their initial border encounter, they were exempt from expedited removal. To retroactively place them into expedited removal now based on a border encounter during which DHS was clearly prohibited from applying expedited removal to them would nullify the TVPRA's protections.

The authors are aware of only a small number of cases in which ICE subjected a young person (now an adult) previously processed as a UC to expedited removal, and in three of those cases, ICE changed course and placed the young person into full removal proceedings after advocacy by counsel. However, given these cases, there is a legitimate concern that DHS could try to subject additional youth whom DHS previously determined to be UCs but no longer meet the definition of an unaccompanied child to expedited removal. In addition to the arguments against expedited removal described above, below we lay out some additional considerations and arguments for young people in the three main postures where this issue is likely to arise: (1) DHS issued the young person an NTA at the time of the UC determination but never filed that NTA with the immigration court, thus they are not currently in 240 proceedings, (2) the young person's removal proceedings were previously terminated or dismissed for them to pursue immigration relief at USCIS, so they are no longer in 240 proceedings, or (3) the young person remains in 240 proceedings, but DHS is pursuing dismissal of the proceedings in order to try to subject them to expedited removal.

There are additional arguments against the application of expedited removal to young people with SIJS or pending asylum claims, as detailed in Sections G and H, respectively.

However, please note that there may be limited opportunities to successfully advance these arguments, given the statutory limitations on judicial review of expedited removal. Section J discusses the fora in which an advocate may be able to advance these arguments—with an ICE or USCIS officer, before an IJ in opposition to a government motion to dismiss INA section 240 proceedings or in credible fear review proceedings, or, in limited circumstances, through a habeas petition.

a. Young Person's NTA Never Filed with the Immigration Court

Young people who were processed as UCs at the time of apprehension and issued an NTA that was never filed with the court can argue that despite the government's failure to promptly institute removal proceedings against them, they remain entitled by statute to full removal proceedings if DHS later seeks to remove them.[45] It would contravene Congressional intent if the government's failure to file their NTA

[44] *Id.* § 240(a)(1).
[45] *See* 8 U.S.C. 1232(a)(5)(D)(i) (right to placement in full removal proceedings applies to "[a]ny [UC] sought to be removed by [DHS]").

with the immigration court while they still met the definition of a UC meant that DHS could then subject them to expedited removal, thereby depriving them of their right to full removal proceedings, including access to counsel and the ability to pursue relief from removal.

b. Young Person's Removal Proceedings Previously Terminated or Dismissed

Under the prior administration, DHS prosecutorial discretion policies encouraged Office of the Principal Legal Advisor (OPLA) attorneys to deprioritize, and thus agree to dismiss, the cases of many young people who were in the process of pursuing survivor-based benefits (U visa, T visa, VAWA, and SIJS) at USCIS. Additionally, in many cases DHS was willing to dismiss the removal proceedings of young people previously determined to be UCs who were pursuing asylum in the first instance with USCIS. As a result of these past policies and practices, many young people who were processed as UCs at apprehension had their removal proceedings dismissed. At that time, dismissal was seen as favorable for, and protective of, these young people, who were all in the process of pursuing immigration relief with USCIS; there was no concern at that time that they would be subjected to expedited removal, as the government only applied expedited removal at the border. Thus, while young people gave up the important safeguards they were afforded in removal proceedings when they agreed to dismissal, this decision was made in reliance on government policies that treated this population as exempt from expedited removal and not a priority for enforcement, given that they were already in the process of pursuing survivor-based immigration relief. It would undermine the protective purposes of the TVPRA if the government could now, based on new immigration enforcement priorities and a new interpretation of the law, subject them to expedited removal.

c. Young Person Is Still in Removal Proceedings

For young people in this third scenario—who entered as UCs but no longer meet the definition, and who remain in INA section 240 removal proceedings—all of the arguments against expedited removal detailed above still apply. These young people also have the additional defense that DHS cannot initiate expedited removal against a noncitizen who is still in removal proceedings.[46] Thus, for this group, the first line of defense will be opposing DHS's motion to dismiss their removal proceedings, including on the basis that it would be unlawful for DHS to subject them to expedited removal, for the reasons outlined above. For more information on general arguments against dismissal, see the National Immigration Project's practice alert on this topic, which links to a template opposition to a DHS motion to dismiss to pursue expedited removal.[47]

F. Are UCs in ORR custody who are close to turning 18 at risk of being transferred to ICE custody and then subjected to expedited removal?

For the reasons articulated in Section E (as relevant to a particular case), young people who entered as UCs and are aging out into ICE custody should not be subjected to expedited removal. Federal law requires ICE to consider placement of children turning eighteen in the least restrictive setting available after considering danger to self and the community and flight risk.[48] It does not address altering their removal proceedings.

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[46] *See* 8 CFR §§ 1003.14(a)-(b) (vesting sole jurisdiction with the immigration judge upon filing of a charging document in immigration court).
[47] National Immigration Project, *Practice Alert: Protecting Noncitizens from Expedited Removal and Immigration Court Arrests* (May 30, 2025), https://nipnlg.org/sites/default/files/2025-05/alert-protecting-noncitizens-er.pdf; National Immigration Project*, Template Opposition to DHS Motion to Dismiss to Pursue Expedited Removal* (Feb. 28, 2025), https://nipnlg.org/work/resources/template-opposition-dhs-motion-dismiss-pursue-expedited-removal.
[48] 8 U.S.C. § 1232(c)(2)(B).

For young people in this population who are concerned about detention, keep in mind that there is a permanent injunction in place in the *Garcia Ramirez et al. v. ICE* case.[49] Pursuant to the injunction, ICE must comply substantively with federal law requiring ICE to consider placing UCs aging out of ORR custody in settings less restrictive than federal custody, including by ensuring these UCs are eligible for alternatives to detention programs.

In addition, for a period of five years, until September 21, 2026, ICE must:

- Re-train its officers and revamp its policies and handbook on how to make custody determinations when youth in ORR custody turn eighteen;
- Document its custody decisions; and
- Provide monthly reports and documentation to class counsel.

Very recently, ICE began implementing a policy to detain UCs turning eighteen in ORR custody that was directly in conflict with the permanent injunction. Specifically, ICE claimed that UCs who have not been admitted would be subject to mandatory detention under INA § 235(b) and could only be released on parole for "urgent humanitarian reasons or significant public benefit." After class counsel filed a motion to enforce, on October 5, 2025, the court in *Garcia Ramirez* granted a motion for a temporary restraining order and to enforce the final judgment and permanent injunction.[50] Thus, ICE cannot automatically detain young people turning eighteen in ORR custody.

Class counsel is interested in hearing from any practitioner who has a client who ages out of ORR custody and is released, but is then re-detained in the weeks and months following their eighteenth birthday. You can notify class counsel in *Garcia Ramirez* by emailing clearinghouse@immcouncil.org and litigation@immigrantjustice.org.

G. Can expedited removal be applied to young people with SIJS, regardless of whether they are UCs?

As with young people previously determined to be UCs, there are strong legal arguments that young people with approved SIJS petitions cannot be subjected to expedited removal.

In *Osorio-Martinez v. Attorney General*, the Third Circuit Court of Appeals held that the jurisdiction-stripping provision of the INA[51] that limits judicial review of expedited removal orders to three specific grounds was an unconstitutional suspension of the writ of habeas corpus as applied to SIJS beneficiaries seeking judicial review of orders of expedited removal.[52] The Third Circuit emphasized the substantial ties that young people with SIJS have to the United States. The court noted that these ties include that special immigrant juveniles (SIJs) have satisfied the rigorous eligibility requirements for SIJS, that Congress has accorded SIJS beneficiaries a range of statutory and procedural protections that establish a substantial legal relationship with the United States, and that SIJS beneficiaries are "a hair's breadth from being able to adjust their status" to lawful permanent resident.[53] In remanding the case to the district court, the Third Circuit noted that expedited orders of removal are incompatible with the "statutory and

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[49] No. 18-508 (D.D.C. Sept. 21, 2021) (Final Judgment and Permanent Injunction), https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2021-09/Garcia-Ramirez-v.-ICE_Final-Judgment.pdf.
[50] *Garcia Ramirez v. ICE*, No. 18-00508 (D.D.C. Oct. 4, 2025), ECF No. 414 (order granting motion for temporary restraining order and to enforce final judgment and permanent injunction).
[51] 8 U.S.C. § 1252(e)(2).
[52] 893 F.3d 153 (3d. Cir. 2018). This case concerned four children who entered the U.S. with their mothers and were ordered expeditiously removed but later sought and were granted SIJS while they were in family detention.
[53] *Id.* at 174.

constitutional rights of SIJ designees."[54] These rights include eligibility to apply for adjustment of status to a lawful permanent resident, protection against having their SIJS revoked without prescribed process, and the due process rights that automatically attach to statutory rights.[55]

Moreover, the expedited removal statute only applies to an individual who, among other things, is inadmissible under either INA § 212(a)(6)(C) or INA § 212(a)(7). But INA § 212(a)(6)(C) and INA § 212(a)(7)(A) do not apply to SIJS beneficiaries when determining their "admissibility as an immigrant."[56] Further, SIJS beneficiaries do not fall into either of the two groups of noncitizens expedited removal may apply to: they are neither arriving at a port of entry, nor have they "not been admitted or paroled." To the contrary, SIJS beneficiaries must be physically present in the United States, and they are deemed to have been paroled into the United States by INA section 245(h)(1).[57] Thus, practitioners can argue that the statutory protections conferred on SIJS beneficiaries are incompatible with the requirements for expedited removal.[58]

H. Are there any additional protections for asylum seekers who entered as UCs?

Yes, though the nature of the protections will depend on several factors, including whether they are a *J.O.P.* class member, whether they met the UC definition at the time of filing their asylum application, and if they did not, whether they were placed in adult ICE detention prior to filing their asylum application.

The TVPRA gives UCs certain procedural protections when they apply for asylum.[59] First, UC asylum seekers are entitled to have their asylum applications initially decided by USCIS—a non-adversarial process, even if they are in pending removal proceedings.[60] This protection is an exception to the general rule that people in removal proceedings must file their asylum applications with the immigration court, which is an adversarial setting. Second, UC asylum seekers are exempt from the "one-year filing deadline," which is the general requirement that applicants must file their asylum application within a

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[54] *Id.* at 178.
[55] *Id.* at 178-179.
[56] INA § 245(h)(2)(A).
[57] *See also Rodriguez v. Perry*, 747 F.Supp.3d 911 (E.D. Va. 2024) (holding for purposes of bond eligibility that a young person with SIJS was converted from an arriving noncitizen to an "alien present" in the United States when he was awarded SIJS).
[58] The government may argue that SIJs are only deemed paroled for purposes of adjustment of status. *See e.g.,* 8 CFR § 245.1(e)(3)(i) ("For the limited purpose of meeting one of the eligibility requirements for adjustment of status under section 245(a) of the Act, which requires that an individual be inspected and admitted or paroled, an applicant classified as a special immigrant juvenile under section 101(a)(27)(J) of the Act will be deemed to have been paroled into the United States as provided in § 245.1(a) and section 245(h) of the Act."). Advocates can point to the language in the statute that SIJs "shall be deemed, for purposes of subsection (a), *to have been paroled into the United States*" to argue that this parole also removes them from the reach of the expedited removal statute. INA § 245(h)(1) (emphasis added). The authors are aware of several habeas petitions filed in recent months on behalf of SIJS beneficiaries whom DHS had subjected to expedited removal. In one case, the court rejected the petitioner's challenge; in at least two other cases DHS abandoned expedited removal and placed the young person in full removal proceedings after they filed a habeas petition. *Compare Benito Vasquez v. Moniz*, 788 F. Supp. 3d 177 (D. Mass. 2025) (rejecting SIJS beneficiary's due process challenge to his expedited removal-based detention), *with Lopes Ramiro v. Moniz*, No. 25-11851 (D. Mass.) (this news article describes how DHS commenced full removal proceedings after the habeas petition was filed).
[59] For more information on the TVPRA protections for UCs, see ILRC, *Who Has Initial Jurisdiction Over UC Asylum Claims? Matter of M-A-C-O- and JOP v. DHS* (Apr. 17, 2025), https://www.ilrc.org/resources/who-has-initial-jurisdiction-over-uc-asylum-claims-matter-m-c-o-and-jop-v-dhs.
[60] INA § 208(b)(3)(C).

year of their last arrival.[61] In 2019, advocates brought a lawsuit, *J.O.P. v. DHS*, to challenge the first Trump administration's narrow interpretation of these TVPRA asylum protections, under which only young people who met the UC statutory definition on the date they filed the asylum application were covered, but not those who had previously been determined to be UC if they no longer met the UC definition when they filed their asylum application.[62] That litigation resulted in a 2024 settlement agreement (generally in effect until May 2026)[63] and a 2025 USCIS memo (in effect until at least February 2028).[64]

To summarize the state of the law in light of the TVPRA asylum provisions, BIA precedent,[65] the *J.O.P.* settlement agreement, and the 2025 USCIS memo:

- Young people who first file an asylum application while they meet the UC definition are entitled to an initial USCIS adjudication, are exempt from the one-year filing deadline, and entitled to postponements of their removal proceedings to await USCIS adjudication.[66]
- Young people who meet the *J.O.P.* class definition are entitled to a USCIS adjudication of the merits of their asylum application during which USCIS may not apply the one-year filing deadline, *unless* they first filed an asylum application after they were placed in adult immigration detention.[67] **ICE may not remove a *J.O.P.* class member while they are awaiting a USCIS adjudication on the merits of their asylum application**.[68]
    - *J.O.P.* class members are those who, on or before February 24, 2025, (1) were determined to be a UC; and (2) who filed an asylum application that was pending with USCIS; and (3) on the date they filed their asylum application with USCIS, were 18 years of age or older, or had a parent or legal guardian in the United States who is available to provide care and physical custody; and (4) for whom USCIS has not adjudicated the individual's asylum application on the merits.[69]
- Young people with prior UC determinations, who no longer met the UC definition on the date they filed their asylum application, and who do not fall within the *J.O.P.* class, are covered by the 2025 memo and thus entitled to a USCIS merits adjudication of their asylum application, during which USCIS may not apply the one-year filing deadline, *unless* they first filed an asylum application after they were placed in adult immigration detention. However, non-*J.O.P.* class members are **NOT** covered by the stay-of-removal provision in the settlement agreement.

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[61] INA § 208(a)(2)(B) (general one-year filing deadline); *id.* § 208(a)(2)(E) (exemption for unaccompanied children).
[62] For more information on the *J.O.P.* litigation and settlement agreement, see the National Immigration Project's litigation page, https://nipnlg.org/work/litigation/jop-v-dhs.
[63] *J.O.P.* Settlement Agreement, https://nipnlg.org/sites/default/files/2024-07/2024-JOP-settlement-agreement.pdf.
[64] Memorandum from Brett Lassen, Acting Chief, USCIS Asylum Division, *Revised Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children and Implementation of the J.O.P. Settlement Agreement* (Oct. 30, 2025), https://www.uscis.gov/sites/default/files/document/legal-docs/JOP_UAC_Procedures_Memo_10.30.2025.pdf.
[65] *Matter of M-A-C-O-*, 27 I&N Dec. 477 (BIA 2018).
[66] *See* EOIR Memorandum, *Continuances*, at 3 (Jan. 8, 2021), https://www.justice.gov/eoir/media/1388071/dl?inline.
[67] *J.O.P.* Settlement Agreement, at 6-7 § III.B-C, https://nipnlg.org/sites/default/files/2024-07/2024-JOP-settlement-agreement.pdf.
[68] *Id.* at 8-9 § III.I.
[69] *Id.* at 2 § II.E.

In light of the above, if DHS initiates expedited removal proceedings against an asylum-seeking young person with a prior UC determination, consider the following strategic points in addition to the arguments discussed above about the illegality of subjecting anyone processed as a UC to expedited removal:

- If the young person is a *J.O.P.* class member, DHS may not remove them unless and until they receive an adjudication on the merits of their asylum application. Even if DHS were to issue an expedited removal order, DHS would not be able to execute it unless USCIS first adjudicates the asylum application on the merits and does not grant them asylum. The National Immigration Project's *J.O.P.* litigation page has a sample letter to ICE asserting the *J.O.P.* stay that could be adapted for this context.[70]
- For young people with prior UC determinations who do not meet the *J.O.P.* class definition and who filed an asylum application before their adult immigration detention, USCIS has jurisdiction over their application despite any expedited removal order and USCIS must adjudicate the asylum application on the merits under the 2025 memo. Immigration detention is a basis to request an expedited adjudication, following the procedures outlined in the memo.
- For young people with prior UC determinations who have not yet filed for asylum at the time they are detained by DHS and processed for expedited removal, consider whether there is a basis for the client to file an asylum application with USCIS under the 2025 memo, arguing that USCIS should nevertheless accept jurisdiction. For example, if the young person first expressed an intention to seek asylum to a government official while they met the UC definition, they could argue that USCIS should consider that date as the date the asylum application was filed and accept jurisdiction.[71]
- For young people in all of the above scenarios, practitioners should also vigorously advocate with ICE and USCIS against the client's amenability to expedited removal given their prior UC determination, as described above.

For more information on navigating removal proceedings and detention for asylum seekers with prior UC determinations, see the National Immigration Project's practice advisory on this subject.[72]

I. Is it risky to request termination for my client in 240 proceedings?

Previously, it was standard practice for practitioners to seek termination of their clients' INA section 240 removal proceedings once they were pursuing relief at USCIS. However, with the potential risk of expedited removal being applied to individuals who are not in removal proceedings, this risk calculus has changed.

Practitioners may seek mandatory termination for their clients on multiple grounds under 8 CFR § 1033.18(d)(1), including defects to the Notice to Appear (NTA), improper service of the NTA, and because DHS cannot sustain the charge in the NTA. Practitioners may also wish to challenge DHS's proof of alienage, suppress evidence of alienage that was obtained unlawfully, or raise prejudicial

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[70] The template stay letter is available at https://nipnlg.org/sites/default/files/2025-03/template-letter_stay-removal-JOP-class-member.pdf. It is recommended to incorporate into the ICE stay letter a reference to the court's April 23 order enforcing the *J.O.P.* Settlement Agreement and prohibiting DHS from removing *J.O.P.* class members. https://nipnlg.org/sites/default/files/2025-04/Doc_254_Order.pdf.

[71] For further discussion of this untested argument, see National Immigration Project, Practice Advisory: *Navigating the Removal Proceedings of J.O.P. Class Members and Other Asylum Seekers with Prior Unaccompanied Child Determinations*, at 12 (Apr. 10, 2025), https://nipnlg.org/work/resources/practice-advisory-navigating-removal-proceedings-jop-class-members-and-other-asylum.

[72] *Id.*

regulatory violations, all with the goal of terminating proceedings.[73] In 2024, EOIR revised its regulations to add specific discretionary termination grounds, including for those pursuing forms of USCIS relief that are common for unaccompanied children.[74] Practitioners may seek discretionary termination because a young person has filed for asylum as a UC, is prima facie eligible for lawful status before USCIS, such as adjustment of status, or has deferred action.[75]

Given the current aggressive immigration enforcement climate, practitioners should be aware that a successful motion to terminate may lead to ICE detaining the client to pursue expedited removal or initiate new removal proceedings. As explained above, there are strong arguments for why an unaccompanied child, even if they reunify with a parent or legal guardian or turn eighteen, should not be subject to expedited removal. For many young people, termination of proceedings remains the safest option so that they are not ordered removed, but whether DHS will attempt to use the expanded expedited removal provisions on former unaccompanied children, especially if proceedings were dismissed or terminated many years ago and the youth is re-apprehended, remains an open question. As of the writing of this practice advisory, the authors are only aware of a handful of cases where DHS attempted to use expedited removal against a former unaccompanied child. The End SIJS Backlog Coalition is tracking the use of expedited removal on SIJS youth through a survey that we invite advocates to complete.[76]

Remaining in removal proceedings carries its own risks. If DHS is pursuing a removal order or arguing that a young person is subject to mandatory detention under INA § 235(b)(2) (discussed further in Section K), seeking termination may be the best option. Especially if the IJ seems intent on issuing a removal order, it is important to make all legal arguments, including that the IJ should terminate rather than order removal, to preserve these arguments for appeal.

J. How can I raise challenges to the application of expedited removal to my client?

If a young person is being subjected to expedited removal, the practitioner should:

- Advocate with the ICE ERO officer;
- Advocate with USCIS, if the young person is in the CFI process and/or seeking asylum as an unaccompanied child;
- Argue before the IJ, if the young person is in full removal proceedings and DHS is seeking to dismiss proceedings, or if the young person is in a credible fear review hearing; and/or
- Consider filing a habeas petition.

As soon as the practitioner is made aware that their client is subject to expedited removal, they should communicate with ICE or USCIS that the young person was previously determined to be an unaccompanied child. For example, the practitioner can email the office with the following message:

> "I am writing with regard to my client, [Full Name] [A number], who is detained at [detention center]. It is my understanding that your office considers [her/him/them] subject to expedited removal. However, [First Name] entered the United States as an unaccompanied child on [Date].

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[73] For an overview of these arguments, see *Quick Guide: Defending SIJS Clients in Removal Proceedings* (Apr. 2, 2025), https://nipnlg.org/sites/default/files/2025-04/quick-guide-defending-SIJS-removal-proceedings.pdf.
[74] For more information about using the new EOIR regulations in the current climate, see ILRC, *Seeking Administrative Closure and Termination: Using New EOIR Regulations in a Hostile Enforcement Environment* (Feb. 5, 2025), https://www.ilrc.org/resources/seeking-administrative-closure-and-termination-using-new-eoir-regulations-hostile.
[75] 8 CFR § 1003.18(d)(1)(ii).
[76] End SIJS Backlog Coalition, Survey: ICE/OPLA Practices Vis a Vis SIJS-Eligible Children, https://forms.gle/zKZGxkqgiJiXgpF7A.

> See attached ORR Verification of Release. As ICE's own Juvenile Coordinator Handbook recognizes, the TVPRA prohibits ICE from applying expedited removal to an unaccompanied child. The governing statute at 8 U.S.C. § 1232(a)(5)(D) requires that an unaccompanied child like [First Name] be placed in full removal proceedings, not expedited removal."

Ideally, the practitioner will be able to advocate before an expedited removal order is issued, but if not, they should request that DHS rescind the expedited removal order and issue an NTA instead.

If advocacy before DHS and EOIR is not successful, habeas review of expedited removal orders in federal court may be considered. However, federal court review of expedited removal orders is quite limited due to jurisdiction-stripping provisions found at 8 U.S.C. § 1252(e). That provision limits federal court review to three determinations: whether the petitioner is a noncitizen, whether the petitioner was ordered removed under expedited removal, and whether the petitioner is a lawful permanent resident, refugee, or asylee.[77] Some advocates have argued that the second exception—whether the petitioner was ordered removed under expedited removal—allows a federal court to assess whether it is appropriate for an individual to be subjected to an expedited removal order when DHS has no statutory authority to do so—as is the case for UCs.[78]

Separately, practitioners could argue that federal review of expedited removal orders against UCs must be permitted, because to restrict such review would violate the Suspension Clause of the Constitution. The Suspension Clause states that the writ of habeas corpus cannot be suspended "unless when in Cases of Rebellion or Invasion the public Safety may require it."[79] There have been challenges to a restrictive interpretation of habeas review for expedited removal orders, including in *Osorio-Martinez v. Attorney General* and *Castro v. DHS*, described above in Section G. In those cases, the petitioners argued that foreclosing habeas review of expedited removal orders in certain contexts would violate the Constitution's Suspension Clause. In *Castro v. DHS*, the Third Circuit applied the two-step analysis set forth in *Boumediene v. Bush*, 553 U.S. 723 (2008) to determine whether a jurisdiction stripping statute violates the Suspension Clause. First the court must determine "whether petitioners are barred from seeking the writ or invoking the protections of the Suspension Clause either because of their status . . . or physical location. . . ."[80] If the petitioner is not barred, the court must then determine whether "Congress has provided adequate substitute procedures for habeas corpus."[81] While the Third Circuit rejected the petitioners' argument in *Castro*, the same court accepted the petitioners' argument two years later in *Osorio-Martinez*—a case involving SIJS beneficiaries—putting significant weight on the statutory protections SIJS affords and the ties to the United States that a grant of SIJS represents.

While there is no similar case addressing Suspension Clause challenges to the expedited removal review statute on behalf of those with prior UC determinations, practitioners could make similar arguments on behalf of UCs as those successfully advanced in *Osorio Martinez* on behalf of SIJS beneficiaries. The TVPRA recognizes UCs as a distinct group and provides them with important statutory safeguards—such as placement into full removal proceedings—that creates a clear legal relationship with this country. That relationship satisfies the first prong of the *Boumediene* analysis. For the second prong, there is no alternative formal process available to replace habeas review as a means to contest an expedited removal order against an unaccompanied child. Given the close ties of UCs with the United States and the lack of

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[77] 8 U.S.C. § 1252(e)(2).
[78] At least one court has agreed that 8 U.S.C. § 1232(e)(2)(B) permits judicial review of whether an expedited removal order was applied lawfully. *Am.-Arab Anti-Discrimination Comm. v. Ashcroft*, 272 F. Supp. 2d 650 (E.D. Mich. 2003). However, most other courts that have taken up this issue have disagreed. *See, e.g.*, *Vaupel v. Ortiz*, 244 F. App'x 892, 895 (10th Cir. 2007); *Castro v. United States Dep't of Homeland Sec.*, 835 F.3d 422, 432 (3d Cir. 2016).
[79] Article I, § 9, cl. 2.
[80] *Boumediene*, 553 U.S. at 739.
[81] *Id.* at 771.

alternative process to contest expedited removal, practitioners could invoke the Suspension Clause when filing a habeas petition to challenge the application of expedited removal against a UC.

Young people who have an approved SIJS petition can use the *Osorio-Martinez* case as a roadmap for arguing that the federal court has jurisdiction to hear the case despite the jurisdiction-stripping provisions in 8 U.S.C. § 1252(e). As mentioned above, in *Osorio-Martinez*, the Third Circuit held that the district court properly exercised habeas jurisdiction because the children's claims implicated their constitutional rights and statutory protections because they had been granted SIJS. The court distinguished its earlier decision in *Castro v. DHS*, 835 F.3d 422 (3d Cir. 2016), noting that *Castro* dealt with asylum seekers with no additional legal status, whereas here, the children had been granted SIJS, which carried additional protections.

For more information about the use of habeas in expedited removal cases, see the American Immigration Council practice advisory on expedited removal[82] and the National Immigration Litigation Alliance's practice advisory on habeas petitions.[83]

K. How do these arguments about expedited removal overlap with recent BIA decisions about mandatory detention?

In May and September 2025, the BIA issued two decisions drastically expanding the scope of "mandatory" detention under INA § 235(b)(2)(A), which applies to certain noncitizens undergoing immigration court removal proceedings: *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec 216 (BIA 2025). Because these decisions involve the detention authority for people in full removal proceedings, rather than the detention authority for people in expedited removal proceedings, they do not directly overlap with the arguments described in this resource about expedited removal. This section briefly unpacks the statutes and recent decisions that govern the immigration detention of people eighteen and over who are undergoing expedited removal and full removal proceedings.[84]

People undergoing expedited removal proceedings are detained under INA § 235(b)(1)(B)(iii)(IV), under which their detention is "mandatory," meaning they have no right to a bond hearing before an IJ. Similarly, people who are transferred from expedited removal proceedings to full removal proceedings under INA § 240 after passing a credible fear interview are detained under INA § 235(b)(1)(B)(ii), which mandates their detention.[85] Also, people who enter the United States as "arriving" noncitizens, for example through parole at a port of entry, are not eligible for bond if they are detained.[86] For all three of these categories of noncitizens, DHS has discretion to release them on parole under INA § 212(d)(5)(A)—though discretionary parole is exceedingly rare at this time.

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[82] AIC Practice Advisory, *Expedited Removal: What Has Changed Since Executive Order No. 13767, Border Security And Immigration Enforcement Improvements* (Feb. 20, 2017), https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/final_expedited_removal_advisory-_updated_2-21-17.pdf.

[83] NILA, *Habeas Corpus Petitions* (Jan. 16, 2025), https://immigrationlitigation.org/new-practice-advisory-habeas-corpus-petitions/.

[84] The below discussion does not address detention of children under the age of 18. For more on that topic, see, for example, National Center for Youth Law, *Updates on Protections for Unaccompanied Children: The ORR Foundational Rule and the Flores Settlement Agreement* (July 2024), https://youthlaw.org/sites/default/files/attachments/2024-07/NCYL-July2024-UpdatesOnProtectionsForUnaccompaniedChildren.pdf.

[85] *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019).

[86] 8 CFR § 1003.19(h)(2)(i)(B). *But see Portillo Martinez v. Hyde*, No. 25-11909, 2025 WL 3152847, at *6 (D. Mass. Nov. 12, 2025) (concluding that SIJS beneficiary who had initially entered the United States as an "arriving" noncitizen and UC but had been living in the United States for years when ICE detained him was not an "arriving" noncitizen and was eligible for bond).

As discussed above, young people initially processed as UCs have strong arguments to advance that they may not be subjected to expedited removal proceedings. If that argument succeeds, they would not be subject to the mandatory detention provisions in INA § 235(b)(1) described above. However, they will still have to contend with *Q. Li* and *Yajure-Hurtado*, pursuant to which most IJs have concluded that young adults in removal proceedings with prior UC determinations who were not admitted on a visa are ineligible for bond and instead subject to "mandatory" detention under INA § 235(b)(2)(A).

In *Q. Li,* the BIA held that a noncitizen who was apprehended by DHS and released shortly after entering without inspection was ineligible for bond when she was later re-detained by ICE because her detention was under INA § 235(b)(2)(A) rather than INA § 236(a). In the wake of *Q. Li* (but before *Yajure-Hurtado*), many practitioners had successfully argued in immigration court that when ICE re-detains a noncitizen who was previously processed as a UC, their re-detention is governed by INA § 236(a) rather than INA § 235(b)(2)(A), distinguishing *Q. Li* because of the separate statutes that govern the custody and release of unaccompanied children.

Then, in September 2025, the BIA in *Yajure Hurtado* held that only those noncitizens who have been admitted to the United States are eligible for bond under INA § 236(a); those not admitted (which would include nearly all UCs) are detained under INA § 235(b)(2)(A).[87] In the wake of *Yajure Hurtado*, it appears that IJs have largely been finding that UCs are subject to mandatory detention. Many detained noncitizens in removal proceedings who entered without inspection—including numerous young adults who were previously processed as UCs—have filed habeas petitions to challenge the legality of detention without a bond hearing, with many positive results ordering release or a bond hearing.[88] Practitioners should also watch for updates in various class action challenges to these recent mandatory detention policies, including a nationwide class action called *Maldonado Bautista v. Noem*.[89]

[87] ICE internal guidance from July 8, 2025 took the same position, stating that any "applicant for admission"—defined at INA § 235(a)(1) to include any noncitizen present in the United States who has not been admitted—is detained under INA § 235(b) and ineligible for bond. Guidance available at https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

[88] *See, e.g.*, *Contreras Maldonado v. Cabezas*, No. 25–13004, 2025 WL 2985256 (D.N.J. Oct. 23, 2025); *Torres v. Wamsley*, No. C25-5772 TSZ, 2025 WL 2855379 (W.D. Wash. Oct. 8, 2025); *R.D.T.M. v. Wofford*, No. 25-cv-01141, 2025 WL 2686866 (E.D. Cal. Sept. 18, 2025).

[89] https://www.aclu.org/cases/bautista-et-al-v-noem. There are also a number of pending regional class action mandatory detention challenges, including *Guerrera Orellana v. Moniz*, https://www.aclum.org/en/cases/guerrero-orellana-v-moniz (D. Mass.), and *Sarmiento v. Crawford*, https://www.acluva.org/cases/sarmiento-et-al-v-crawford-et-al (E.D. Va.).