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116th Congress

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October 28, 2020

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The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
500 12th St. SW
Washington, D.C. 20536

The Honorable Tony H. Pham
Senior Official Performing the
Duties of the Director
U.S. Immigration and Customs Enforcement
500 12th St. SW
Washington, D.C. 20536

Dear Acting Secretary Wolf and Senior Official Performing the Duties of the ICE
Director Pham,

We write out of grave concern with respect to the Department of Homeland Security's (DHS) implementation of expanded expedited removal (ER). The agency's implementation of this consequential policy lacks meaningful transparency and appears rushed. The media has reported that U.S. Immigration and Customs Enforcement (ICE) officers have already attended online training for the purpose of preparing them to implement expanded ER starting in mid-October of 2020.¹ We urge DHS to suspend the implementation of expanded ER and answer key questions pertaining to procedures pursuant to this policy, including but not limited to the implementation memorandum and the training course provided to ICE officers.

Under the Trump Administration's expansion, expedited removal is now potentially applicable to immigrants physically present in any part of the United States who (1) are inadmissible because they lack valid entry documents or have procured their entry through fraud or misrepresentation, (2) have not been admitted or paroled, and (3) have been in the country less than two years.²

¹ American Immigration Lawyers Association, "Practice Alert: Implementation of Expedited Removal Expansion" (Oct 16, 2020) <https://www.aila.org/advo-media/aila-practice-pointers-and-alerts/trump-administration-expands-expedited-removal>

² Hillel R. Smith, "The Department of Homeland Security's Nationwide Expansion of Expedited Removal" (Jun 30, 2020) <https://www.crs.gov/Reports/LSB10336?source=search&guid=6e0fe0c6e2d64c2585095cbbc63bb016b&index=0>

ER has far fewer procedural protections than formal removal proceedings with the foreign-born citizens possessing no right to counsel, no right to a hearing, and no right to appeal an adverse ruling to the Board of Immigration Appeals.³ This expansion has prompted significant questions concerning the relationship between the federal government's broad power over the entry and removal of immigrants and the due process rights of immigrants located within the United States.⁴ In September of 2019, the U.S. District Court for the District of Columbia granted a preliminary injunction barring DHS from implementing the expansion of ER.⁵ However, in late-June of 2020, the D.C. Circuit Court of Appeals reversed the district court decision and lifted the injunction.⁶

Although the D.C. Circuit Court recently lifted the injunction, significant constitutional concerns about expanded ER remain unresolved. The key legal questions left open by the circuit court's decision is whether due process considerations limit the use of expedited removal in the interior of the United States.⁷ The Supreme Court has recognized that foreign-born citizens who have physically entered the United States, even unlawfully, are "persons" under the Fifth Amendment's Due Process Clause.⁸ Due process protections generally include a right to a hearing and a meaningful opportunity to be heard before the deprivation of a liberty interest, which are arguably missing in the expedited removal process, where there is no right to a hearing or further review of an administrative determination of removability.⁹ The Trump Administration's expansion of ER raises serious questions with respect to the possible violation of due process rights afforded to immigrants physically present in the country in the course of removal proceedings.

On October 2, 2020, BuzzFeed News reported that Senior Official Performing the Duties of the ICE Director Pham sent an email to ICE employees indicating that ICE officers and agents need to finish a mandatory online training course on the expanded ER policy by October 16.¹⁰ It is our understanding that once ICE officials complete the mandatory training course online, they can begin using the new expanded ER powers to quickly deport immigrants.¹¹ No other information is readily available on how DHS and ICE plan to execute this policy, the process underlying expanded ER, the content of the training course, or when the policy becomes effective. DHS and ICE must thoroughly inform Congress about status of this policy and how it will be carried out by newly trained ICE officers.

We request that DHS and ICE respond to the following questions regarding expanded ER:

1. When will ICE officers and agents begin enforcing expanded ER?
2. With respect to the mandatory online training course ICE officers and agents allegedly took for expanded ER:
 - a. please provide a copy of the implementation memorandum and any additional guidance;
 - b. please provide a copy or demonstration of the online training course;
 - c. when did the online training course begin and when did it end;
 - d. how many hours was the total course;
 - e. who taught and supervised the courses;

³ Id.

⁴ Id.

⁵ American Immigration Lawyers Association, "Practice Alert: Implementation of Expedited Removal Expansion" (Oct 16, 2020) <https://www.aila.org/advo-media/aila-practice-pointers-and-alerts/trump-administration-expands-expedited-removal>

⁶ Id.

⁷ Hillel R. Smith, "The Department of Homeland Security's Nationwide Expansion of Expedited Removal" (Jun 30, 2020) <https://www.crs.gov/Reports/LSB10336?source=search&guid=6e0fe0c6e2d64c2585095cbc63bb016b&index=0>

⁸ Id.

⁹ Id.

¹⁰ American Immigration Lawyers Association, "Practice Alert: Implementation of Expedited Removal Expansion" (Oct 16, 2020) <https://www.aila.org/advo-media/aila-practice-pointers-and-alerts/trump-administration-expands-expedited-removal>

¹¹ Id.

- f. how many ICE agents and officers took the course;
- g. how many ICE agents and officers completed the course;
3. Please outline each step from beginning to end on how ICE agents and officers are trained to carry out expanded ER.
4. How are ICE agents and officers trained to determine whether a foreign-born citizen meets the criteria for expanded ER?
 - a. how are ICE agents and officers trained to determine whether a person has mental competency issues, is the sole caregiver of a U.S. citizen child, or appear to be eligible for relief from removal id placed in regular removal proceedings;
 - b. how are ICE agents or officers assessing the nature of that person’s ties to the United states.
 - c. how are ICE agents or officers trained to determine the length of time that a person has been in the United States?
5. How are ICE agents and officers trained to respond if the individual indicates that they have pending applications for relief such as a U visa?
6. How are ICE agents and officers trained to respond if a foreign-born citizen indicates an intent to seek asylum, claims a fear of persecution or torture if removed, or requests administrative review of a claim that he or she is a U.S. citizen, LPR, asylee, or refugee?
 - a. if a foreign-born citizen claims a fear of persecution, how are ICE agents and officers trained to communicate with U.S. Citizenship and Immigration Services?
7. Are ICE agents and officers trained to know that unaccompanied children are statutorily exempted from ER?
8. When a foreign-born citizen in the interior is subject to expanded expedited removal, where is the person detained and what agencies are informed of the detention and subsequent removal?

It is imperative that DHS suspend the implementation of expanded ER and ICE respond quickly to the above questions by November 6, 2020.

Sincerely,



Joaquin Castro
Chair
Congressional Hispanic Caucus

Ruben Gallego
First Vice-Chair
Congressional Hispanic Caucus

Nanette Diaz Barragán
Second Vice-Chair
Congressional Hispanic Caucus

Adriano Espaillat
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