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Immigration

## Expedited Removal Expands to Interior of United States

**Legal Update**

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By Immigration Group

*This article was prepared with the assistance of ABIL, the Alliance of Business Immigration Lawyers, of which Loan Huynh, Fredrikson Immigration Department Chair, is a member.*

With immediate effect, the Department of Homeland Security (DHS) issued a notice on July 23, 2019, to place certain persons determined to be inadmissible in expedited removal, with limited exceptions. Affected individuals include those who have not been admitted or paroled into the United States and who have not "affirmatively shown, to the satisfaction of an immigration officer, that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility."

The notice makes the following points, among others:

- Currently, immigration officers can apply expedited removal "to aliens encountered anywhere in the United States for up to two years after the alien arrived in the United States, provided that the alien arrived by sea and the other conditions for expedited removal are satisfied."
- For those who entered the United States by crossing a land border, DHS permits the use of expedited removal "if the aliens were encountered by an immigration officer within 100 air miles of the U.S. international land border and were continuously present in the United States for less than 14 days immediately prior to that encounter."
- The DHS Secretary has the "sole and unreviewable discretion" under the Immigration and Nationality Act "to modify at any time the discretionary limits on the scope of the expedited removal designation."
- The Acting DHS Secretary is exercising his statutory authority to designate several categories of aliens not previously designated for expedited removal:
  - Aliens who did not arrive by sea who are encountered anywhere in the United States more than 100 air miles from a U.S. international land border, and who have been continuously present in the United States for less than two years; and

- Aliens who did not arrive by sea who are encountered within 100 air miles from a U.S. international and border and who have been continuously presenting the United States for at least 14 days but for less than two years.
- Aliens otherwise subject to expedited removal who indicate either an intention to apply for asylum or a fear of persecution or torture will be given further review by an asylum officer, including an opportunity to establish "credible fear" and thus potential eligibility for asylum.
- An alien otherwise subject to expedited removal is given a "reasonable opportunity to establish to the satisfaction of the examining immigration officer that he or she was admitted or paroled into the United States." Aliens determined by immigration officers to be subject to expedited removal nonetheless "will receive prompt review of that determination if they claim under oath, after being warned of the penalties for perjury, that they have been admitted for permanent residence, admitted as a refugee, granted asylum, or are a U.S. citizen."

This is a major expansion of expedited removal. An estimate of at least 20,000 additional immigrants per year may be subject to expedited removal under the new policy. The American Civil Liberties Union (ACLU) quickly put out a statement calling the policy "unlawful," noting that under the plan, "immigrants who have lived here for years would be deported with less due process than people get in traffic court," and vowing to "sue to end this policy quickly." In the meantime, immigration lawyers are counseling clients of the need to be able to quickly document that they have been in the United States for at least two years, including carrying such documentation with them at all times.

Written comments may be submitted by September 23, 2019, via the method set forth in the DHS notice.