



U.S. Immigration
and Customs
Enforcement

February 28, 2025

MEMORANDUM FOR: All ICE Employees

FROM: Caleb Vitello
Acting Director

A handwritten signature in blue ink, appearing to read "Caleb Vitello", with a long horizontal line extending to the right.

SUBJECT: Implementation Guidance for January 2025 Federal Register
Notice, Designating Aliens for Expedited Removal

Pursuant to section 235(b)(1) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(1), the U.S. Department of Homeland Security (DHS) may remove, without a hearing before an immigration judge, arriving aliens who are inadmissible under sections 212(a)(6)(C) (fraud or willful misrepresentation) or 212(a)(7) (lack of valid immigration documents) of the INA, 8 U.S.C. §§ 1182(a)(6)(C) or 1182(a)(7). The Secretary of Homeland Security, in his or her “sole and unreviewable discretion,” may also designate certain other aliens to whom the expedited removal provisions may be applied.¹

Background

On January 21, 2025, Acting Secretary Benjamin C. Huffman exercised the full scope of the Secretary’s expedited removal authority via publication in the Federal Register² (hereinafter “AS1 Designation”). This expedited removal designation applies to applicants for admission (other than unaccompanied alien children as defined in 6 U.S.C. § 279(g)(2)).³, who:

- are not already subject to an expedited removal designation;⁴

¹ See INA § 235(b)(1)(A)(iii)(I), 8 U.S.C. § 1225(b)(1)(A)(iii)(I); 8 C.F.R. § 235.3(b)(1)(ii).

² *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025).

³ See 8 U.S.C. § 1232(a)(5)(D).

⁴ Aliens already subject to an expedited removal designation include those “apprehended 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] aliens who entered the United States by crossing a land border[.] . . . [and] apprehended by an immigration officer within 100 air miles of the United States international land border and who were continuously present in the United States for less than 14 days immediately prior to the date of encounter.” 90 Fed. Reg. at 8139 (emphasis added). Accordingly, provided they are otherwise subject to expedited removal as a matter of law, the January 21, 2025, designation applies to aliens who entered the United States *by land* and are either: (1) encountered within 100 miles of the border but have been continuously present in the United States at least 14 days but less than two years; or (2) encountered anywhere in the United States beyond 100 miles of the border and have not been continuously present for at least two years.

- are encountered anywhere in the United States;
- have not been admitted or paroled into the United States;
- are determined to be inadmissible under section 212(a)(6)(C) or (a)(7) of the INA, 8 U.S.C. §§ 1182(a)(6)(C) or 1182(a)(7); and
- 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.⁵

ICE immigration officers generally have broad discretion whether to apply expedited removal in individual cases, or whether to instead permit aliens to depart voluntarily or withdraw their applications for admission, process amenable aliens for administrative removal under section 238(b) of the INA, 8 U.S.C. § 1228(b), or place aliens in removal proceedings before an immigration judge under section 240 of the INA, 8 U.S.C. § 1229a.⁶

Policy and Procedures

ICE immigration officers will apply the AS1 Designation to aliens who cannot establish to the satisfaction of the immigration officer that they were physically present in the United States continuously for the two-year period immediately prior to the date of the determination of inadmissibility, and who otherwise fall within the legal parameters of the expedited removal designation, without regard to whether the alien illegally entered the United States before or after the date the AS1 Designation was published. I make this discretionary policy decision to give effect to the AS1 Designation invoking the Secretary's full authority under INA § 235(b)(1), 8 U.S.C. § 1225(b)(1).

As a practical matter, I anticipate that the AS1 Designation primarily will be used by ICE in the Criminal Apprehension Program and Worksite Enforcement contexts, when Deportation Officers encounter aliens who have been arrested by another law enforcement agency for criminal activity or when Special Agents encounter unlawful workers at worksites targeted for enforcement action based on investigative leads, as well as in the review of cases encountered in pending section 240 removal proceedings.⁷ However, ICE personnel may apply expedited removal under any circumstances permitted by the AS1 Designation and consistent with this guidance.

For any alien whom DHS is aware is amenable to expedited removal but to whom expedited removal has not been applied, ICE personnel will take all necessary steps to review the alien's case and consider, in exercising your enforcement discretion, whether to apply expedited

⁵ See INA § 235(b)(1)(A)(iii)(II), 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

⁶ See *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 522 (BIA 2011) (holding that language in INA § 235(b)(1)(A)(i), 8 U.S.C. § 1225(b)(1)(A)(i), does not limit DHS's discretion to place aliens amenable to expedited removal into removal proceedings under INA § 240, 8 U.S.C. § 1229a).

⁷ See Memorandum from Benjamin C. Huffman, Acting Secretary, *Guidance Regarding How to Exercise Enforcement Discretion* (Jan. 23, 2025).

removal. This may include steps to terminate any ongoing removal proceedings.⁸ ICE personnel should conduct an individualized assessment of each case and consider relevant factors including, but not limited to, whether an alien's case presents mental competency issues, whether the alien appears eligible for relief available in section 240 removal proceedings, the duration of the alien's presence in the United States and nature of his or her ties to the country, whether ICE seeks to charge additional inadmissibility grounds (e.g., due to criminal history), and whether the alien failed to apply for asylum within the statutory deadline. *See* INA § 208(a)(2)(B) (setting a one-year deadline); *but see id.* § 208(a)(2)(D) (discussing a very narrow exception to that deadline).

Each applicant for admission encountered by ICE following the publication of the AS1 Designation who an immigration officer seeks to place in expedited removal proceedings—and who is not subject to a previous expedited removal designation—bears the affirmative burden to show to the satisfaction of the encountering immigration officer that he or she has been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility by providing evidence establishing the place, date, and manner of entry into the United States and continuity of presence since that time.⁹ Evidence that may demonstrate an alien's continuous physical presence in the United States includes, but is not limited to: bankbooks, leases, deeds, licenses, bills, receipts, letters, birth records, church records, school records, employment records, evidence of prior law enforcement encounters or tax payments, and/or the alien's credible sworn testimony. If an alien is unable to personally provide such evidence at the time of encounter but claims to have access to such evidence, the alien shall be permitted a brief but reasonable opportunity to obtain it or communicate with a third party to obtain such evidence.

ICE immigration officers who encounter aliens subject to this designation but who make claims to lawful permanent resident, refugee, or asylee status, or who make claims to be a United States citizen, must comply with the procedures set forth in 8 C.F.R. § 235.3(b)(5). Additionally, ICE personnel must continue to comply with ICE Policy 16001.2, *Investigating the Potential U.S. Citizenship of Individuals Encountered by ICE* (Nov. 10, 2015), and should bear in mind that falsely claiming to be a U.S. citizen can carry both criminal penalties and civil immigration consequences.¹⁰

As required by statute and regulation, any alien who is processed for expedited removal, and who indicates an intention to apply for asylum or expresses a fear of persecution or torture or a

⁸ For cases in which a Notice to Appear has already been filed with the Immigration Court, ICE may not unilaterally dismiss proceedings. However, the Office of the Principal Legal Advisor may move the immigration judge to dismiss proceedings, pursuant to 8 C.F.R. § 239.2(a)(7), including because “circumstances of the case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government.”

⁹ *See* 8 C.F.R. § 235.3(b)(1)(ii) (“Any absence from the United States shall serve to break the period of continuous physical presence.” (emphasis added)).

¹⁰ *See, e.g.,* INA § 212(a)(6)(C)(ii), 8 U.S.C. § 1182(a)(6)(C)(ii) (ground of inadmissibility for falsely claiming citizenship); 18 U.S.C. § 1015(e) (federal felony for making false statement of claim of U.S. citizenship with intent to obtain a benefit or employment).

fear of return to his or her country, will be referred for an interview by an asylum officer who will determine whether the alien has a credible fear of persecution or torture.¹¹ If the alien is found to have a credible fear, he or she will be referred for further consideration of his or her protection claims in accordance with relevant processes already in place.¹²

Training, Approval, and Documentation

It is critical that ICE's application of the AS1 Designation be consistent with applicable law, carefully documented, and reflective of sound enforcement decision-making. To that end, all ICE officers and agents and Office of the Principal Legal Advisor (OPLA) attorneys must complete specialized *Expedited Removal Refresher and January 2025 Designation* training on the ICE Training System portal within 30 days of the date this memorandum is issued. Further, application of expedited removal must be approved by Enforcement and Removal Operations Supervisory Detention and Deportation Officers (SDDOs) or Homeland Security Investigations Assistant Special Agents in Charge (ASACs). ASACs may delegate this responsibility down to the Group Supervisor level, but no lower. SDDOs and ASACs (or their delegates) should consult with OPLA prior to approving the application of expedited removal. Finally, ICE systems are configured to track all cases processed under the AS1 Designation so that prompt reporting can be generated. ICE personnel will use the "ER-Full Scope" and "ER-Credible Fear Full Scope" dispositions, as applicable, when processing cases under the designation.

No Private Right

This document provides internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Likewise, this guidance places no limitations on the otherwise lawful enforcement or litigative prerogatives of DHS.

Attachment

- *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025).

¹¹ See INA § 235(b)(1)(B)(v), 8 U.S.C. § 1225(b)(1)(B)(v); 8 C.F.R. §§ 235.3(b)(4), 208.30. Based on longstanding agency policy, aliens in the credible fear process should also be referred for a credible fear interview if a third party (e.g., attorney, friend, or relative) notifies the immigration officer that the alien is planning to apply for asylum or has a fear of return, if the officer notices signs of serious physical trauma that might indicate mistreatment abroad or if the alien exhibits non-verbal cues that alert the officer to possible fear of harm.

¹² See 8 C.F.R. § 208.30(f) (providing that the asylum officer may either place the alien into removal proceedings under INA § 240, 8 U.S.C. § 1229a, or retain USCIS jurisdiction for further consideration of the alien's protection claims in an Asylum Merits interview pursuant to 8 C.F.R. § 208.9).