



Expanded Expedited Removal and Challenges to Due Process

I. Introduction

The Trump administration's recent [expansion of expedited removal](#), which subjects noncitizens to rapid deportation without a judicial hearing, creates tension with the constitutional principle of due process. By creating a rapid deportation pipeline that replaces standard immigration proceedings with a separate system of administrative removals, the new policy will have profound consequences for noncitizens facing removal and poses additional risks to U.S. citizens, lawful permanent residents, and visa holders.

II. What is due process?

Due process is a cornerstone of American democracy that protects all people from arbitrary government action. Rooted in the [Magna Carta](#) of 1215 and enshrined in the [Fifth](#) and [Fourteenth Amendments](#) to the U.S. Constitution, due process guarantees that no person shall be "deprived of life, liberty, or property, without due process of law." This fundamental right ensures that before the government acts against an individual, it must follow fair procedures that include proper notice, a meaningful opportunity to be heard, and a decision by a neutral decision-maker. This principle encompasses two essential dimensions: [procedural due process](#), which focuses on the fairness of the government's methods, and [substantive due process](#), which protects certain fundamental rights from government interference altogether, regardless of the procedure used. Together, these protections create a shield against arbitrary or unjust treatment by government authorities.

Crucially, due process rights in the U.S. extend to all individuals within American borders, irrespective of citizenship status. This principle is firmly established in both [constitutional](#) text and Supreme Court [precedent](#). In 1982, the Supreme Court [said](#) that "[a]liens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law." Notably, while due process rights apply to both citizens and noncitizens, their practical application has historically varied depending on an immigrant's status and circumstances. Legal experts [clarify](#) that, while the U.S. Constitution doesn't guarantee a full trial for every migrant facing deportation, it does require that the government take steps to ensure fairness and the safety of vulnerable individuals. Thus, while the practical application of due process rights may vary, the core entitlement to due process in removal proceedings remains a vital safeguard. Without it, as constitutional law professor Ilya Somin [notes](#), "how can you show that you're actually a U.S. citizen?"

III. Why is the expansion of expedited removal a challenge to due process?

A. Comparison to Standard Removal Proceedings

Created in 1996 by Congress, [expedited removal](#) is – as its name indicates – a fast-track allowing for the rapid deportation of undocumented noncitizens. Under [standard removal proceedings](#) in

immigration court, noncitizens are entitled to a formal process that safeguards fundamental rights and ensures fairness. The process is initiated when the Department of Homeland Security (DHS) files a [Notice to Appear](#), which clearly states the basis for removal and the charges against the individual. The government must then demonstrate, before an immigration judge, that the individual is a noncitizen and meets the legal criteria for removal under U.S. law. Throughout these proceedings, noncitizens have the right to present evidence, call witnesses, and challenge the government's case. Immigration judges are also responsible for considering applications for relief from removal, such as asylum, cancellation of removal, or adjustment of status, and they must weigh the facts and arguments from both sides before rendering a decision.

In contrast, expedited removal proceedings drastically curtail these protections. Although the practice is well-established in recent decades, the [Trump administration's dramatic expansion](#) of its use raises significant due process concerns. In expedited removal, immigration officers, [rather](#) than judges, make the final determination regarding removability, often after only a brief interview with the individual in custody. Individuals subject to expedited removal typically have little to no opportunity to consult with an attorney, gather evidence, or challenge the government's assertions. The lack of meaningful review and the absence of a neutral arbiter significantly increase the risk of errors, including the wrongful removal of U.S. citizens, lawful permanent residents, or individuals with valid claims for protection such as asylum or withholding of removal.

The recent expansion of expedited removal further complicates this landscape by [requiring](#) noncitizens anywhere within the U.S. to prove, often on the spot and to the satisfaction of an immigration officer, that they have been continuously present in the U.S. for at least two years. Individuals must [demonstrate](#) "clearly and beyond doubt" that they meet this requirement but could be denied the time and resources necessary to assemble such proof. In practice, this policy compels individuals to [carry](#) documentation of their residency—such as school records, employment documents, utility bills, or church records—at all times, or risk being swept into a rapid deportation process without a fair opportunity to defend themselves. Moreover, there is [no clear guidance](#) on which documents are considered sufficient – for example, it is not even clear whether photocopies will be accepted as valid proof of continuous presence – leaving individuals vulnerable to arbitrary or inconsistent treatment by immigration authorities.

B. Litigation Alleging Due Process Violations

[Make the Road New York v. Huffman](#) (D.D.C. 2025) is a lawsuit challenging the Trump administration's January 2025 expansion of expedited removal. Filed by [Make the Road New York](#), a non-profit organization that advocates for immigrant and civil rights, [the American Civil Liberties Union](#), and [the New York Civil Liberties Union](#), the lawsuit argues that the expanded expedited removal policy violates the [Fifth Amendment](#) by depriving noncitizens of fundamental procedural protections. Specifically, plaintiffs [contend](#) that the expanded expedited removal process and accompanying tactics employed by the administration deny individuals the right to a fair hearing before they are "deprived of an important interest" and [argue](#) that current procedures "fail to provide time or a meaningful opportunity" for individuals to meet the burden of proof placed upon them.

Plaintiffs in [Make the Road New York](#) face a major legal hurdle – a 2020 [ruling](#) by the U.S. Court of Appeals for the D.C. Circuit, reversing a lower court ruling halting the first Trump administration's (very similar) nationwide expedited removal expansion under the Administrative Procedure Act (APA), despite plaintiffs in that case raising similar due process

shortcomings. In that earlier case, the appeals court held that “because Congress committed the judgment whether to expand expedited removal to the [DHS] Secretary’s ‘sole and unreviewable discretion,’” under the expedited removal statute ([8 U.S.C. § 1225\(b\)\(1\)\(A\)\(iii\)\(I\)](#)), the administration’s decision is not subject to review under the APA, limiting a key avenue to challenge the new expansion. However, neither the lower court nor the D.C. Circuit reached claims brought under the Immigration and Nationality Act (INA) or the U.S. Constitution, and that case was rendered moot by the Biden administration withdrawing the expanded expedited removal guidance. Accordingly, plaintiffs *in Make the Road New York v. Huffman* may be able to raise due process-based INA and constitutional claims in the new litigation.

IV. How is the administration expanding the number of individuals eligible for expedited removal?

A. Termination of the CHNV Humanitarian Parole Program

In addition to applying expedited removal to a larger proportion of the current unauthorized population, the Trump administration has also expanded the overall unauthorized population by terminating various programs that temporarily afforded people lawful presence. These actions have even further expanded the number of individuals subject to expedited removal. The termination of the [humanitarian parole](#) program for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV) placed [more than 500,000 individuals](#) – all of whom were lawfully present in the U.S. and many of whom had established lives, jobs, and community ties – at risk of rapid deportation. Revocation of parole status reverts these individuals to “inadmissible” status, despite their initial lawful entry, and severely limits their access to the immigration court system. Over the first five months of the Trump administration, the termination of CHNV and CBP One parole programs, as well as actions to end various Temporary Protected Status grants will impact [more than a million people with temporary statuses](#), many of whom could be placed into expedited removal if they entered the U.S. within the past two years.

The Trump administration’s actions around the CHNV program are instructive. On his first day in office, President Trump signed an [executive order](#) directing the Department of Homeland Security (DHS) to “terminate all categorical parole programs that are contrary to the policies of the United States established in my Executive Orders,” including CHNV. This order mandated an immediate halt to the processing of new applications for these programs and set in motion a process to review and revoke existing grants of parole. Shortly thereafter, DHS issued a [memorandum](#) instructing agency officials to “pause, modify, or terminate” these parole programs and to evaluate which parolees could be placed into expedited removal.

The memorandum suggested that DHS would prioritize the removal of CHNV parolees who have not filed for or been granted another form of immigration relief before the termination notice, and it may use expedited removal to deport those who have been in the U.S. for less than two years. Although legal challenges temporarily blocked the termination, the U.S. Supreme Court on May 30 [allowed](#) the administration to [proceed](#) with terminating the CHNV parole program as litigation continues in the lower courts. DHS began sending [termination notices](#) to affected parolees on June 12, informing them that they must depart the U.S. immediately, as it continues to pursue tactics that amplify the reach of expedited removal.

B. Dismissal of Active Deportation Cases and Courthouse Arrests

Since May 2025, DHS has utilized an unusual tool on an unprecedented scale to move people into expedited removal – widespread [dismissals of pending immigration cases followed by](#)

[immediate arrests](#) – to circumvent standard immigration court and undercut due process. Under this

[strategy](#), DHS attorneys request that immigration judges dismiss active immigration cases, including claims for asylum and other humanitarian protections, to move them directly into expedited removal proceedings. Because immigration [judges are employees of the U.S. Department of Justice](#) (DOJ), they are subject to a new DOJ [memorandum](#) that explicitly instructs them to allow DHS lawyers to make oral motions to dismiss pending immigration court cases and to grant these dismissals quickly, without allowing immigrants the 10-day response time that had previously been standard. Critically, these dismissals do not resolve immigration status favorably or permit individuals to remain free. Instead, they make dismissed individuals immediately eligible for expedited removal.

The administration has sought to leverage the immigration court system's infrastructure to create a procedural pipeline: immigrants who resolve, or are denied the chance to resolve, a legal matter are immediately channeled into expedited removal. No longer subject to previous restrictions on enforcement actions at [sensitive locations](#), Immigration and Customs Enforcement (ICE) agents now target individuals at [courthouses](#) for strategic efficiency: courthouses provide guaranteed access to targets at scheduled times, eliminating resource-intensive location tracking. Additionally, individuals entering courthouses pass [security screening](#), ensuring they are unarmed and pose minimal physical risk to officers. This enforcement strategy deliberately [targets](#) individuals who are actively complying with legal processes by attending court hearings. As a result, this strategy is likely to place severe strains on immigration courts going forward, terminating court proceedings, disincentivizing people from showing up to court dates, and generally undermining due process. Such targeting punishes lawful behavior and creates a perverse incentive to avoid court appearances by [putting](#) immigrants in a situation where they may face arrest and, now, expedited removal even if they are complying with the established legal process.

V. Conclusion

The Trump administration's expansion of expedited removal undermines fundamental due process protections for noncitizens. While Congress set out standards for expedited removal and the practice is well-established, the administration's recent actions to expand its use raise a number of significant due process concerns.

In terminating various temporary status programs and conducting courthouse arrests, the administration is actively channeling individuals who have been complying with existing rules and guidelines into a parallel track of rapid, administrative removal lacking essential due process protections. And in targeting those who have been residing in the United States for extended periods and requiring individuals to affirmatively prove longer residence, they are more likely to undercut the rights of those who have developed work, family, and community ties to the U.S., and sweep in those who should not even qualify under the new standard, potentially even U.S. citizens. The administration's current application of expedited removal is therefore in tension with fundamental due process principles and sacrifices fairness for speed, increasing the risk of errors and unjust outcomes, a danger to citizens and noncitizens alike.