

Immigration System Must Provide Due Process, Not Facilitate Coercion and Abuse

Access to immigration courts is essential to a fair, humane immigration system that respects fundamental standards of due process. Recent policies have undermined that access, **pushing people out of immigration courts into coercive detention, stoking fear to make people abandon their legitimate claims**, and eroding due process rights. These tactics target people who are trying to follow the rules – appearing for their immigration court hearings and ICE check-ins. Immigration court already lacks many due process protections, but these extreme new policies **violate human rights and erode the rule of law for all**.

Immigration courts (part of the Department of Justice, or DOJ) conduct removal (or deportation) proceedings to ensure that the Department of Homeland Security (DHS) complies with essential safeguards before expelling people from the United States. Immigration judges determine whether the person accused of being deportable is, in fact, deportable. They may not be deportable because they are a U.S. citizen, have not violated immigration laws, or have a legal defense against deportation under federal law, such as fleeing persecution or torture, having family in the U.S., or maintaining long-standing community ties. **The new DHS tactics – and immigration court complicity – attempt to strip people of this legal right to defend themselves against removal.**

DHS DENYING IMMIGRANTS A DAY IN COURT

DHS attorneys, following new executive orders and policy directives, are asking to dismiss removal proceedings in immigration court in order to force people into the expedited removal process where they have little chance of a fair day in court.

What's happening: When a person appears for their scheduled removal hearing in immigration court, DHS attorneys ask the immigration judge to dismiss the case because it is “no longer in the government interest.” After the judge dismisses the case, ICE takes the person into *mandatory detention* by claiming they are subject to *expedited removal*. ICE and the immigration courts appear to be pushing the bounds of who can be placed in expedited removal – dismissing cases and detaining people even when they entered on parole programs, have pending applications for status, have filed for asylum, or have been in the U.S. for more than two years.

Expedited removal **mandates detention** and allows the government to **deport people without a hearing** before an immigration judge. Until this year, the government limited expedited removal to people found within 100 miles of a border within 14 days of arriving in the U.S. Now DHS is expanding it to apply nationwide to people who have been here less than 2 years or who entered without inspection at any time.

Once in expedited removal, people who fear persecution or torture in their country of origin must request “credible fear” screenings or face summary expulsion. If they fail to establish credible fear of persecution or torture, DHS can order them removed without any hearing to present evidence on their behalf. This lack of due process appears to be a major reason for the policy. If someone does establish credible fear, they are placed back in the same removal proceedings that DHS previously asked to be dismissed. This bait-and-switch tactic has particularly harsh consequences for people with disabilities and other vulnerable populations, depriving them of a chance to present their claims in court.

DHS USING ARBITRARY DETENTION TO DETER CLAIMS

When someone is in expedited removal, the law requires that they be held in detention with no access to release on bond. They often remain in detention if they pass a credible fear screening and pursue an asylum case, even though asylum cases can take months or years to resolve.

Mandatory detention costs taxpayers billions of dollars, but the Administration appears willing to impose that cost to deter people from pursuing legal protections. Indefinite detention in horrible conditions coupled with isolation from support systems – including attorneys, witnesses, and interpreters – effectively coerces people into giving up valid claims for status, padding deportation numbers.

Our Immigration Court Observers report the devastating impacts of these tactics:

- “A man facing dismissal asked if his information would be kept private if he were deported, as [his] government is a dictatorship and he doesn’t want them to know he’s returned as they will see him as a traitor, **they torture people who return to [the country], but he prefers to be free than kept in detention.**”
- “He asserted he was a member of the LGBTQ community, that he has been diagnosed with HIV, and if sent back to his country of origin he will be persecuted and killed. He was very emotional in the courtroom and **begged the judge to not ‘send him home to die.’**”
- “One person asked ‘did I make an error on my application? Did I do something wrong? It was filed on time.’ **The judge said the person had done everything right, but the case would be dismissed.**”

COURT ALLOWING DISMISSALS, ERODING PROTECTIONS

DHS attorneys assert that removal proceedings should be dismissed as not in the government interest, but it appears from our observers that **what they want dismissed is the noncitizen’s opportunity to have their case heard by a judge.** The immigration judge typically accepts the DHS attorney’s assertions about the government interest at face value, not requiring any evidence or reasoning. Judges fail to explain to the people appearing before them that DHS may still detain and try to deport individuals using expedited removal after the case is out of immigration court. Judges also do not explain that individuals have the right to seek a credible fear review to bring their asylum case back to court, even when the person already has a pending asylum case. And when people appeal dismissals – meaning the removal case is still pending – ICE takes them into custody and puts them into expedited removal proceedings anyway.

Our Immigration Court Observers report that the unfairness is palpable:

- The judge and DHS’s interactions “**felt so coordinated,**” raising concerns that the judges are not evaluating each case objectively.
- An observer noted “the judge’s explanations are misleading, telling respondents that the government isn’t deporting them, that the judge has no choice but to dismiss their case, or that they can apply for something outside of court when **the judges must know that the person will be in expedited removal.**”
- There is an ICE agent inside the courtroom who appears to be texting with agents outside the courtroom if the judge grants the dismissal so that a coordinated arrest can occur.

TAKE ACTION

Government tactics that undermine people's rights and subvert due process erode the rule of law. **These practices not only undermine our values, they also have incredibly dangerous consequences for the people affected.** People with cases in immigration court face an impossible choice: show up, have their case dismissed, and be placed in detention immediately, or skip their court date and receive a final removal order, sacrificing their ability to defend against deportation. **These tactics undermine the lawful pathways to status and due process protections that Congress enacted.** The government is spending billions of dollars to unnecessarily detain people who are showing up to court or to ICE check-ins voluntarily for administrative, non-criminal immigration violations. Authorities are using these tactics to deport people with valid asylum claims to countries where they face persecution, torture, and death. People who have experienced trauma are facing prolonged detention. Families and communities are destabilized as parents must choose between following the rules, risking detention and separation from their children, or living in hiding with the constant fear of detection.

- ✓ **Congress should demand information:**
 - Ask DHS to clarify how it is respecting due process and complying with the Refugee Act under its policy of dismissing cases and initiating expedited removal.
 - Ask DHS and HHS how they are complying with the Trafficking Victim Protection Act and its reauthorizations, particularly provisions protecting the best interests of the child and safeguarding the rights of trafficking survivors in immigration proceedings.
 - Ask DOJ what guidance it is providing to immigration judges to ensure that their decisions on DHS motions for dismissal comport with their roles as independent adjudicators and guarantors of due process protections.
 - Ask the Administration why it requested more than \$100 billion in appropriations if ICE is conducting operations at immigration courthouses with minimal cost.
- ✓ **Congress should pass the *Immigration Court Efficiency and Child Court Act* and demand that appropriations continue to provide children in immigration court with a lawyer.**
- ✓ **Congress should pass the *Real Courts, Rule of Law Act* and ensure that people in immigration court have their cases heard by an independent adjudicator in a fully funded court system.**
- ✓ **Congress should refuse to provide any further appropriations in support of these policies or to facilitate the arbitrary, coercive detention of people with immigration cases already in progress.**
- ✓ **Congress should codify limitations on expedited removal in law so that it does not result in arbitrary detention, denial of due process, or the return of people to face persecution.**
- ✓ **Congress and concerned Americans should visit immigration court to fully understand these processes and witness the impact they have on people's lives.**