NATIONAL IMMIGRATION PROJECT

Lawyers for the Movement

Practice Alert:

Protecting Noncitizens from Expedited Removal and Immigration Court Arrests[1]

May 30, 2025

Last week, Immigration and Customs Enforcement (ICE) began a new effort to detain noncitizens in immigration court.[2] In what appears to be a coordinated effort between ICE Office of the Principal Legal Advisor (OPLA) and ICE Enforcement and Removal Operations (ERO), ICE OPLA has been moving to dismiss Immigration and Nationality Act (INA) § 240 proceedings. Then, when the immigration judge (IJ) grants that motion, ICE ERO takes the noncitizen into custody, issuing expedited removal orders.

This practice alert is intended to ensure that practitioners know what immediate steps they can take to protect clients who may be subjected to expedited removal. However, this practice alert does not offer comprehensive guidance on this evolving issue.

As discussed below, **practitioners should immediately explain the expedited removal process to clients whom ICE may subject to this process, including explaining the potential need to undergo a credible fear interview, and should immediately have their clients complete G-28s with wet signatures to allow the practitioner to communicate with ICE and United States Citizenship and Immigration Services (USCIS) if the noncitizen is taken into custody and processed through expedited removal.**

If practitioners are advising pro se litigants who may be subjected to expedited removal, they should advise them that they are at particular risk of having OPLA seek to dismiss proceedings and could consider providing guidance on how to best defend themselves before the IJ, which

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[2] *See e.g.,* Joshua Goodman and Gisela Salomonice, *Agents Wait in Hallways of Immigration Court as Trump Seeks to Deliver on Mass Arrest Pledge*, AP NEWS, May 22, 2025, https://apnews.com/article/immigration-courts-arrests-trump-ice-deportations-fa96435d4ec021cc8ff636b23d80d848; Sarah Matusek, *New Phase of Trump Deportation Push: ICE Arrests at Immigration Court,* CHRISTIAN SCIENCE MONITOR, May 25, 2025, https://www.csmonitor.com/USA/Politics/2025/0528/immigration-court-ice-deportation-trump.

could include providing an Oral Opposition to Dismissal Template as well as information about expedited removal and credible fear interviews.

Who can ICE place in expedited removal based on ICE's current interpretation of expedited removal?

ICE is interpreting the expedited removal statute in a more expansive way than practitioners have previously seen. Under ICE's interpretation, noncitizens:

> identified as having been [paroled at the border; released at the border and told to report to ICE; paroled with conditions] are subject to ER if they are inadmissible under INA 212(a)(6)(C) or (a)(7) and either (1) the initial CBP encounter was within 14 days and 100 air miles of the border; or (2) the [noncitizen] has not been continuously physically present in the United States for two years prior to the finding of inadmissibility by ERO.

See Reuters, Leaked ICE Email. Pursuant to the same email, for those who entered the United States as "arriving" noncitizens, ICE's view is that "[t]here is no time limit on the ability to process [arriving noncitizens] for ER." Thus, while some practitioners have believed that noncitizens who have been physically present in the United States for at least two years are not subject to expedited removal, ICE may be interpreting their expedited removal authority more broadly. The National Immigration Project believes the administration's expanded use of expedited removal is unlawful. However, it is critical for practitioners to understand what ICE is doing now because expedited removal cases move quickly and afford few rights to noncitizens.

For an overview of expedited removal, including categories of noncitizens who cannot be subjected to expedited removal, see National Immigration Litigation Alliance, Everything Expedited Removal.

Can ICE place noncitizen children in expedited removal?

Unaccompanied noncitizen children (UC) from non-contiguous countries are statutorily exempt from expedited removal proceedings, 8 U.S.C. § 1232(a)(5)(D)(i), and children with approved Special Immigrant Juvenile Status (SIJS) are deemed paroled by statute, INA § 245(h). The National Immigration Project's End SIJS Backlog Coalition asks practitioners who have an SIJS client whom the Department of Homeland Security (DHS) subjected to expedited removal to complete a survey on ICE enforcement trends. If ICE ERO pursues expedited removal of a client with a previous UC determination, practitioners should reach out to National Immigration Project Senior Attorney Rebecca Scholtz, rscholtz@nipnlg.org.

Is the expansion of expedited removal being challenged in federal court?

Yes. The administration's interpretation of expanded expedited removal is being challenged in two lawsuits, *Make the Road New York v. Noem*, 25-cv-00190 (D.D.C.) (challenging DHS's designation of expanded expedited removal throughout the country to certain noncitizens present for fewer than two years), and *CHIRLA v. Noem,* 25-cv-00872 (D.D.C.) (challenging the application of expedited removal to noncitizens who were paroled into the country through ports of entry). If you have a client whose removal proceedings are being/have been dismissed so that

they can be processed through expedited removal, please contact either: the ACLU, if your client entered without inspection, at m.tan@aclu.org; or Justice Action Center, if your client was paroled into the country through a port of entry, at tom.jawetz@gmail.com.

How can practitioners respond to an OPLA unilateral motion to dismiss?

Once DHS has filed a Notice to Appear (NTA) with the immigration court, the IJ has jurisdiction over the case, meaning that the IJ must decide whether to allow DHS to dismiss the proceedings. DHS may file a written motion in advance of the hearing or may move to dismiss orally at the hearing. If DHS makes an oral motion, practitioners should oppose and request a continuance to allow time to file a written opposition. If the IJ dismisses proceedings despite the oral opposition, practitioners should reserve appeal and ask the IJ to note on the order that appeal was reserved and the decision cannot be executed during the appeal period and while any appeal is pending. Unless a party waives appeal, 8 CFR § 1003.6(a) states that IJ decisions are automatically stayed during the 30-day appeal period and while any appeal is pending. Although ICE may not subject a noncitizen to expedited removal while the noncitizen remains in § 240 removal proceedings (which includes while an appeal is pending with the Board of Immigration Appeals (BIA)), ICE is increasingly disregarding legal norms in its enforcement actions. Given this context, it is important for legal representatives to invoke every legal strategy available to their clients to disrupt ICE ERO's new—and often unlawful—detention and removal tactics.

If practitioners receive a written motion to dismiss, they should oppose dismissal in writing. Pursuant to the Executive Office for Immigration Review (EOIR) Immigration Court Practice Manual (ICPM), parties who receive a motion to dismiss should have at least ten days to respond. *See* ICPM Ch. 5.12 ("Responses to motions must comply with the deadlines and requirements for filing. See 8 C.F.R. § 1003.23(a), Chapter 3 (Filing with the Immigration Court) Ch. 3.1(b)(4)."); EOIR ICPM Ch. 3.1(b)(4) (designating ten (10) days after the motion to reopen or motion to reconsider was received by the immigration court as the response deadline). The National Immigration Project has issued a Template Opposition to a DHS Motion to Dismiss to Pursue Expedited Removal which practitioners can use as a starting point to fight dismissal to allow clients to seek relief in immigration court.

What are the options if the IJ dismissed the removal proceedings before providing an opportunity to respond to OPLA's unilateral motion to dismiss?

Practitioners may file a motion to reconsider within 30 days arguing that the IJ failed to provide the respondent an opportunity to oppose dismissal. If the IJ does not grant the motion to reconsider by the 30-day appeal deadline, practitioners should timely appeal the IJ's termination order to the BIA raising the same argument included in the motion to reconsider. It is important to timely appeal because filing a motion to reconsider does not toll the deadline to file the notice of appeal. It is possible to tailor the arguments in the National Immigration Project's Template Opposition to DHS Motion to Dismiss to Pursue Expedited Removal to these purposes.

How does appealing the IJ's dismissal order affect ICE's authority to detain a respondent?

As noted above, practitioners should reserve appeal if the IJ terminates proceedings and timely file a notice of appeal with the BIA. Filing the appeal should keep the noncitizen in INA § 240 proceedings and, unless and until § 240 proceedings authority over the noncitizen ends, ICE should not place the noncitizen in expedited removal. *See* 8 C.F.R. §§ 1003.39, 1240.14. While a respondent remains in § 240 removal proceedings, the respondent may remain eligible to seek release on bond from the IJ. However, the BIA recently issued a precedential decision, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), that significantly limits bond; practitioners should be familiar with this decision to understand whether the IJ will likely find that they have jurisdiction to grant bond. Practitioners should file a motion for a bond hearing as soon as possible. For guidance on filing a bond motion, see National Immigration Project's A Guide to Obtaining Release from Immigration Detention.

What are the options if the IJ does not grant OPLA's dismissal motion and ICE still detains the client?

Some practitioners have reported ICE ERO detaining noncitizens at or near immigration courts even if their § 240 proceedings were not dismissed. Prior to the hearing, practitioners should assess the client's eligibility for a bond hearing with *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) and 8 C.F.R. § 1003.19(h)(2)(i)(B) in mind, and, if the client is bond eligible, have a bond motion ready to file should ICE detain the client despite ongoing § 240 proceedings. In cases with a paper-based Record of Proceedings (ROP), this means bringing a bond motion with them to the immigration court. In cases with an electronic ROP, this means having the bond motion teed up to upload and file over the EOIR Courts and Appeals System (ECAS). If the IJ has not yet left the bench by the time ICE has detained the client, the practitioner could ask the IJ to go back on the record in their client's case, request an immediate bond hearing and ask the IJ to order ICE to bring the client back to the courtroom. Ultimately, practitioners may need to pursue habeas if ICE is arguing that the client is being detained pursuant to expedited removal despite the client's § 240 removal proceedings remaining pending. If a habeas petition is appropriate in the client's situation, it will be important to file the habeas petition while the client is still within the jurisdiction where the practitioner plans to file the habeas petition. If a practitioner is not admitted to the federal court in the district or not well-versed in federal court procedures, the practitioner should line up local counsel in advance or at least consult with a local practitioner who knows the jurisdiction well so as to avoid issues with the filing. Note that once ICE ERO transfers the client to a remote detention facility, OPLA will likely seek a change of venue to the Immigration Court with jurisdiction over the detention facility and renew the dismissal motion before a new IJ.

It is likely that once ICE ERO processes the noncitizen into detention, ICE ERO will move the client to a detention facility located far away so it is critical to take all possible steps to seek the client's release from detention quickly.

Is there any way for practitioners to protect noncitizens from detention at or outside the immigration court?

Yes. Practitioners could request a WebEx hearing rather than an in-person hearing for clients or assist pro se respondents with a written request for a WebEx hearing.[3] Recent EOIR guidance has affirmed that, "Most Immigration Judges strongly support the use of [video conferencing] for immigration court hearings because it increases efficiency and flexibility, allows the adjudication of cases from multiple settings without being tethered to a particular courtroom, and does not compromise the fairness of the hearing." *See* Memorandum from Sirce E. Owen, EOIR Acting Dir., PM 25-25, Rescind and Cancel Director's Memorandum 22-07, at 1 (Mar. 14, 2025). That guidance explains that "'internet-based video hearings" are simply a subset of hearings conducted by [video conferencing]." *Id*. Furthermore, longstanding EOIR guidance recognizes that video teleconferencing "may be used for any immigration court hearing, particularly when operational need calls for its usage" including where necessary "to increase convenience and accessibility for respondents; to reduce travel costs; . . .[and] to ensure timely adjudication of cases." *See* Memorandum from James R. McHenry III, Dir., PM 21-03, Immigration Court Hearings Conducted by Telephone and Video Teleconferencing, at 4 (Nov. 6, 2020).

What are the motion practice options for a current client who previously appeared pro se in Immigration Court and the IJ dismissed the removal proceedings?

Practitioners should request the Digital Audio Recording (DAR) from the Immigration Court as soon as possible to understand what transpired at the prior hearing. Practitioners should review the DAR to understand how the IJ described dismissal. The respondent's pro se status should have triggered the IJ's duty to develop the record and this duty arguably required that the IJ inform the respondent that immediate detention, followed by summary removal, was a possibility of accepting dismissal. If the IJ did not provide the respondent notice of the possibility of immediate detention and the respondent did not oppose dismissal, practitioners could argue in a motion to reconsider or on appeal that the respondent's non-opposition to dismissal at the hearing was not knowing or intelligent borrowing from *Matter of Patino,* 23 I&N Dec. 74 (BIA 2001) and *Matter of Rodriguez-Diaz*, 22 I&N Dec. 1320 (BIA 2000), which are decisions issued in the context of appeal waivers.

What are the options if a noncitizen is detained at or outside of the immigration court and placed into expedited removal?

Once a noncitizen is issued an expedited removal order, if the noncitizen fears return to their home country, they must immediately request a credible fear interview. In the current climate in which ICE is not exercising positive discretion, passing a CFI is likely the only way a noncitizen can avoid swift removal.

[3] Practitioners are reminded to complete form EOIR-61 any time they assist a pro se respondent with document preparation that is filed with the immigration court.

How can respondents who fear return to their country of citizenship obtain a CFI?

It is unclear whether ICE will ask noncitizens currently subjected to expedited removal whether they have a fear of return to their country. In any event, practitioners should prepare clients who fear return to tell their deportation officer that they want a credible fear interview if their immigration court case is terminated. While ICE should assume that noncitizens who have filed I-589s have already expressed their fear of return, it is not evident what guidance, if any, ICE ERO is following with regard to asylum seekers being placed into expedited removal after dismissal of § 240 proceedings.

Practitioners should also follow up immediately in writing and by phone with the ICE deportation officer and escalate to the field office director (FOD) if they do not get a quick response, demanding that the asylum seeker be referred to the Asylum Office for a CFI. Practitioners should know that the Asylum Office conducts CFIs seven days per week, including during non-business hours, and during federal holidays.

What documents do practitioners need to represent a client during the expedited removal process?

To prepare for the possibility of ICE placing a client into expedited removal proceedings, practitioners should obtain an original G-28 with a wet signature indicating that the practitioner is representing them before ICE, USCIS (including the asylum office), and CBP as soon as possible. Practitioners may only have signed E-28s from removal defense clients. However, if a client is detained, it will be critical to have a G-28 which allows the practitioner to advocate with ICE and USCIS.

The Asylum Office uses the asylum confidentiality provisions, which are designed to provide asylum seekers with protections, as a weapon against them in the CFI context. Under applicable regulations, asylum seekers can ask the asylum officer to call anyone (including counsel) to sit in on a CFI. However, the Asylum Office will not communicate the results of the CFI to counsel or inform counsel of an IJ review of a CFI unless they have a copy of a G-28 signed by the noncitizen with a wet signature. Given the speed at which CFIs can be scheduled and the possibility of clients being moved to remote detention facilities, practitioners must get G-28s signed for clients as soon as they can. While practitioners should prioritize obtaining signed G-28s from clients who are potentially subject to expedited removal under ICE guidance, since DHS has frequently been acting outside the law, best practice would be to obtain signed G-28s for all clients.

What do practitioners and their clients need to know about CFIs?

Practitioners should prepare all clients who may be subjected to expedited removal for possible credible fear interviews. There are client-facing materials the practitioner can share with their client such as these resources from the Immigration Justice Campaign and this video from Innovation Law Lab, Asylum: Your Case Is In Your Hands, available in many languages. Note, however, that these resources predate the Circumvention of Lawful Pathways rule.

If the noncitizen entered the United States at the southern border between May 11, 2023 and May 11, 2025, their CFI will be conducted under the standards set forth in the Circumvention of Lawful Pathways rule, meaning that the Asylum Officer will first screen them for an exception or rebuttal to the presumption against asylum eligibility. If the Asylum Officer finds an exception or rebuttal ground, the CFI will be conducted under the "significant possibility" standard; if the Asylum Officer does not find an exception or rebuttal ground, then the asylum seeker will need to meet the higher "reasonable possibility" standard. For a discussion of the Circumvention of Lawful Pathways rule, see National Immigration Project's Practice Advisory: Biden's Asylum Ban.

If the noncitizen passes their CFI, they are placed back into INA § 240 proceedings. It is not clear what would happen to the previously filed I-589, or how the one-year filing deadline would be calculated.

If the noncitizen does not pass their CFI, they can request that an IJ review the negative CFI determination. If the IJ finds a credible fear, the asylum seeker is placed into INA § 240 proceedings. If the IJ affirms the finding of no credible fear, then the noncitizen can be removed from the United States with no further procedural protections.

How can practitioners prepare their clients for the possibility of being placed in expedited removal?

Practitioners must make their clients aware of the possibility that they could be detained in immigration court if ICE successfully dismisses their proceedings and issues an expedited removal order. Noncitizens should make arrangements for childcare, pet care, and other immediate needs in the event they are detained without notice. Practitioners should also fully explain the legal processes that could follow, including preparing clients for CFIs, and discussing with clients whether they want to fight their case.

Even if the practitioner has a signed G-28, it is common for USCIS to schedule CFIs without calling counsel and to coerce noncitizens into proceeding with the interview without their counsel present. Detained noncitizens are generally not permitted to bring any papers with them when they are called for their telephonic CFI and therefore must have counsel's telephone number memorized or written on their arm to have the number handy and insist that the Asylum Officer call counsel. Practitioners should also warn clients that the Asylum Officer may pressure them into proceeding with the interview without counsel present and that the client should stand firm that they wish their counsel to be present. Practitioners should consider mooting this conversation with their client to help the client feel comfortable exercising their rights.

What can practitioners advise pro se respondents who are potentially subject to expedited removal under DHS's current expansive interpretation of the law do to protect them from unilateral dismissal of their removal proceedings?

Practitioners advising pro se respondents should advise them that they are at particular risk of having OPLA seek to dismiss proceedings. Practitioners could consider giving pro se

respondents a short pro se written opposition[4] to dismissal modeled after the National Immigration Project's Template Opposition to DHS Motion to Dismiss to Pursue Expedited Removal. Practitioners could also moot with pro se respondents how they can defend themselves at the hearing should OPLA orally move to dismiss their proceedings at a master calendar hearing. Practitioners could moot with pro se respondents requesting that OPLA file a written motion to dismiss so that the pro se respondent has adequate notice of the reasons why OPLA seeks dismissal and can retain counsel to respond to the motion. Should the IJ deny the request for an opportunity to file a written opposition to OPLA's motion to dismiss proceedings, pro se respondents should know how to orally oppose dismissal of their removal proceedings and be prepared to reserve appeal if the IJ dismisses proceedings. The National Immigration Project created an Oral Opposition to Dismissal Template for pro se respondents. At the very least, pro se respondents should know how to object to dismissal in their language. For example, in Spanish, "I object" is "me opongo." Practitioners could also provide pro se respondents this Northwest Immigrant Rights Project (NWIRP) Know Your Rights resource in this dismissal to detention context that is available in Amharic, Arabic, French, Mandarin, Portuguese, and Farsi here.

[4] Practitioners are reminded to complete form EOIR-61 any time they assist a pro se respondent with document preparation that is filed with the immigration court.