



6 Everett St., Suite 3103
Cambridge, MA 02138
hirc@law.harvard.edu
(617) 384-8165

September 23, 2019

Via Federal e-Rulemaking Portal

Acting Secretary Kevin K. McAleenan
Department of Homeland Security
Washington, DC 20229

RE: Request for Comment on Designating Aliens for Expedited Removal, 84 Fed. Reg. 35409
(Jul. 23, 2019), Docket No. DHS-2019-0036-0001

Dear Acting Secretary McAleenan:

The Harvard Immigration and Refugee Clinical Program (“HIRC”) at Harvard Law School writes in response to the Department of Homeland Security (“DHS”) request for comments on Designating Aliens for Expedited Removal, 84 Fed. Reg. 35409 (July 23, 2019) (“the Rule”). One of the first immigration and refugee clinics in the United States, HIRC has represented thousands of individuals from all over the world seeking humanitarian protection since its founding in 1984. HIRC opposes the Rule because the expedited removal process, in its current form, is already rife with serious problems and rights violations.

The current expedited removal system has placed the lives of countless HIRC clients and their family members at risk, improperly returning them to countries where they face grave danger. These include a client’s son who was brutally attacked by corrupt police and gangs, a gay man who was targeted and tortured by community members and authorities, as well as many others whom Customs and Border Protection (“CBP”) failed to adequately screen for fear of return to their countries of origin. Expansion of expedited removal would only exacerbate these issues and endanger the lives of more people.

Under the expedited removal system, CBP must inform people potentially subject to expedited removal of their rights and refer those with a fear of return to their countries of origin to asylum officers within U.S. Citizenship and Immigration Services (“USCIS”) for credible fear interviews (“CFIs”). Yet, studies commissioned by Congress in 2005 and 2016 have documented “serious problems” in the expedited removal process, which place many “at risk of improper return.” U.S. Comm’n on Int’l Religious Freedom, *Report on Asylum Seekers in Expedited Removal: Volume I: Findings & Recommendations* 4-5, 10 (2005). The 2016 study “revealed continuing and new concerns about [CBP] officers’ interviewing practices and the reliability of the records they create, including . . . certain CBP officers’ outright skepticism, if not hostility, toward asylum claims; and inadequate quality assurance procedures.” U.S. Comm’n on Int’l

Religious Freedom, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal 2* (2016); *see also* DHS Office of the Inspector General, *Special Review—Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy* (Sept. 27, 2018) (describing CBP practices amounting to failure to properly refer asylum seekers for CFIs in order to “regulat[e] the flow of asylum-seekers at ports of entry”). The Rule’s expansion of expedited removal would worsen these issues, which DHS has long ignored.

Numerous reports by non-governmental organizations have also documented serious flaws in the system, including officers’ failure to record statements indicating a fear of return and failure to refer individuals expressing a fear of return for CFIs. *See, e.g.*, Amnesty International, *Facing Walls: USA and Mexico’s Violations of the Rights of Asylum-Seekers* (2017) (describing CBP agents’ coercion of and threats to asylum seekers); American Immigration Council, *Deportations in the Dark: Lack of Process and Information in the Removal of Mexican Migrants 1, 2, 5, 7-8* (Sept. 2017) (reporting that CBP failed to ask over half of 600 deported Mexicans whether they feared return to Mexico); American Immigration Council, *Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered 9* (Aug. 2017) (describing CBP’s failure to address complaints of misconduct); Human Rights First, *Crossing the Line: U.S. Border Agents Illegally Reject Asylum Seekers* (May 2017) (documenting CBP abuses, including ignoring asylum claims).

In addition, multiple reports document DHS officers’ failure to include accurate information in expedited removal paperwork, failure to provide people in expedited removal proceedings with the opportunity to review and respond to information in the paperwork, use of coercive tactics to force people to sign forms despite lack of interpretation or understanding. *See, e.g.*, Borderland Immigration Council, *Discretion to Deny 13* (Feb. 2017) (noting that “[i]ndividuals are forced to sign legal documents in English without translation” and “that CBP affidavits are often inconsistent with asylum-seekers’ own accounts”); American Civil Liberties Union, *American Exile 34-36* (Dec. 2014) (documenting cases where individuals were required to sign forms in languages they did not understand); 2005 USCRIF Study at 74 (observing that statements recorded by CBP officers “are often inaccurate and are almost always unverifiable”); *see also United States v. Raya-Vaca*, 771 F.3d 1195, 1205-06, 1210-11 (9th Cir. 2014) (holding that immigration officer’s failure during expedited removal process to advise defendant of charge of removability and failure to permit him to review the sworn statement prepared by the officer violated his due process rights to notice and an opportunity to respond).

As a result of the widespread flaws in the expedited removal process, numerous individuals, including U.S. citizens, have been wrongfully removed from the United States. *See, e.g.*, *Lyttle v. United States*, 867 F. Supp. 2d 1256, 1272-73 (M.D. Ga. 2012); Ian James, *Wrongly Deported, American Citizen Sues INS for \$8 Million*, L.A. Times (Sept. 3, 2000); *see also American Exile* at 38, 39, 63 (describing, *inter alia*, erroneous expedited removal of Mexican citizen who had lived in the United States for 14 years; erroneous expedited removal of Guatemalan woman who told CBP she feared return to Guatemala due to the murder of her father and targeting of her mother by gangs; and erroneous expedited removal without a CFI of young Salvadoran woman who fled domestic violence).

The Rule itself suggests that expansion of expedited removal could force tens of thousands more individuals each year through this flawed system, which routinely deprives individuals of their rights. *See* 84 Fed. Reg. at 35411. Subjecting countless individuals, including those with substantial ties to the U.S., to this fast-tracked system is not appropriate. The difficulty many will face in proving two years of continuous physical presence, especially given the short time frame for expedited removal proceedings, is just one of example of the undue burden this Rule will impose. To avoid improperly subjecting more individuals to a system replete with coercion, factual errors, and inadequate translation, DHS should halt implementation of the Rule.

HIRC thus urges DHS to consider these recommendations, halt expansion of the scope of expedited removal, and act immediately to address the well-documented problems with the expedited removal process. Thank you for your consideration.

Sincerely,

Harvard Immigration and Refugee Clinical Program
6 Everett Street, WCC 3103
Cambridge, MA 02138
617-384-8165
hirc@law.harvard.edu