CLASP
Policy solutions that work for low-income people

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 Center for Law and Social Policy is thankful for the opportunity to comment on the notice of expansion of expedited removal published in the Federal Register on July 23, 2019.

Established in 1968, CLASP is a national, non-partisan, non-profit, anti-poverty organization that advances policy solutions for low-income people. Our comments draw upon the work of CLASP experts in the policy areas of immigration and child care and early education. As an anti-poverty organization with an emphasis on racial equity, we understand the critical importance of defending the rights of immigrant families and their children who may be harmed by immigration enforcement policies.

CLASP writes in response to Docket No. DHS-2019-0036-0001, the Department of Homeland Security (DHS) request for comments on Designating Aliens for Expedited Removal, 84 Fed. Reg. 35409 (Jul. 23, 2019). **CLASP is opposed to the Rule and urges DHS to halt the rule's implementation and withdraw it.** This immediately effective notice broadly expanded the scope of expedited removal to include individuals apprehended after residing in the United States for up to two years and/or in the interior of the United States. The Rule will have immediate and long-lasting effects on the due process and statutory rights of individuals subject to expedited removal. In addition, allowing officers an expansion in discretion of this magnitude is dangerous and particularly harmful to children in immigrant families, including those that are U.S. citizens.

Since its initial implementation over 20 years ago, expedited removal has been rife with error, misconduct, and rights violations. A 2005 study commissioned by Congress documented numerous "serious problems" in the expedited removal process "which put some asylum seekers 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) ("2005 USCIRF Study"). A 2016 follow-up study "revealed continuing and new concerns about [Customs and Border Protection ("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) ("2016 USCIRF Study"). The Rule's expansion of expedited removal

would unacceptably exacerbate these problems, which have long gone unaddressed by DHS.

I. DHS should not expand the scope of expedited removal because its officers routinely record inaccurate or false information on expedited removal forms, coerce noncitizens into signing forms they do not understand, and fail to advise noncitizens of their rights

The content of the paperwork that DHS officers complete during expedited removal proceedings has a profound impact on the individuals subject to expedited removal—for many, it will result in their immediate deportation; for others, the content of forms filled out during initial interviews will impact assessments of their credibility in subsequent proceedings. Yet this paperwork is often replete with errors.

Multiple reports document DHS officers' practice of including inaccurate information in expedited removal paperwork, failing to provide people in expedited removal proceedings with the opportunity to review and respond to information in the paperwork, using coercion to force people to sign forms they do not understand, and requiring individuals to sign paperwork despite interpretation failures that impact their ability to understand the proceedings. *See, e.g.*, Borderland Immigration Council, *Discretion to Deny* at 13 (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"); 2016 USCIRF Study at 2, 20-22 (discussing "continuing and new concerns about CBP officers' interviewing practices and the reliability of the records they create"); American Civil Liberties Union, *American Exile* at 34-36 (describing noncitizens who were required to sign forms in languages they do not understand); 2005 USCRIF Study at 74 (explaining that statements recorded by CBP officers "are often inaccurate and are almost always unverifiable"); *id.* at 55 ("Study observations indicate that paper files created by the inspector are not always reliable indicators" of whether a credible fear interview was merited.); *id.* at 53 (noting that expedited removal forms were routinely inaccurate); *United States v. Sanchez-Figuero*, No. 3:19-cr-00025-MMD-WGC, slip op. at 2, 9 (D. Nev. July 25, 2019) (dismissing unlawful reentry indictment where defendant, who had not slept for 36 hours at the time of apprehension, "was not informed of the charge against him and never received a meaningful opportunity to review the sworn statement"); *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 the defendant of the charge of removability and to permit him to review the sworn statement prepared by the officer violated his due process rights to notice and an opportunity to respond).

In addition, practitioners report that immigration officers routinely fail to advise noncitizens of their rights in expedited removal proceedings, including that they may request to withdraw their applications for admission, which allows noncitizens to leave the United States voluntarily and avoid penalties that include permanent inadmissibility to the country. *See* 8 U.S.C. § 1225(a)(4) (providing that noncitizen seeking admission "may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission"). There is a significant risk that noncitizens subject to the Rule likewise will be erroneously denied this important opportunity, provided by statute, to withdraw their applications for admission.

Forcing tens of thousands more individuals, many of whom will have lived in the United States for significant periods of time and developed substantial ties, through this flawed and fast-tracked system is not appropriate. To avoid subjecting more individuals with claims to relief—or who never should have been subject to expedited removal even under the Rule's broad scope—to a system replete with coercion, factual errors, and inadequate translation, DHS should halt implementation of the Rule.

II. There are well-documented failures in the credible fear process.

Even those individuals who receive credible fear interviews after DHS inspection in expedited removal face significant barriers to fair adjudication of their claims. As multiple reports indicate, individuals who must establish a credible fear—rather than immediately being placed in immigration court proceedings to pursue their asylum claims—may not receive adequate consideration of their claims.

Instead, they face erroneous denials of credible fear, denials of access to counsel, and inadequacies in interpretation. *See, e.g.*, U.S. Dep't of Homeland Sec. Advisory Comm. on Family Residential Ctrs., *Report of the DHS Advisory Committee on Family Residential Centers* 96-100 (2016) (discussing inadequate or nonexistent interpretation services during credible fear interviews and immigration judge reviews of negative credible fear determinations); Borderland Immigration Council, *Discretion to Deny* at 13 (describing interpretation failures during CFIs); 2016 USCIRF Study at 28 (describing case of a detained Ethiopian asylum seeker who was denied an interpreter); American Civil Liberties Union, *American Exile* at 34 ("Most of the individuals interviewed . . . stated that they were given forms to sign in English, which most did not speak or read, and often were not interviewed by an immigration officer who fluently spoke their language or through an interpreter."); *Interior Immigration Enforcement Legislation: Hearing Before the H. Judiciary Subcomm. on Immigration & Border Sec.* 5 (Feb. 11, 2015) (statement of Eleanor Acer, Dir., Refugee Protection, Human Rights First) ("In some cases, interviews are sometimes rushed, essential information is not identified due to lack of follow up questions, and/or other mistakes are made that block genuine asylum seekers from even applying for asylum and having a real chance to submit evidence and have their case fully considered").

Rather than placing additional strain on the CFI system and subjecting more individuals to an inadequate credible fear interview process, DHS should halt implementation of the Rule.

III. DHS officers have wrongfully removed numerous individuals through expedited removal.

As a result of the widespread flaws in the expedited removal process, numerous individuals have been wrongfully removed from the United States. This includes multiple reported instances of deportations of U.S. citizens. *See, e.g.*, *Lyttle v. United States*, 867 F. Supp. 2d 1256, 1272-73 (M.D. Ga. 2012); *Maria de la Paz v. Jeh Johnson*, No. 1:14-CV-016 (S.D. Tex. habeas petition filed Jan. 24, 2014); Ian James, *Wrongly Deported, American Citizen Sues INS for $8 Million*, L.A. Times (Sept. 3, 2000) (recounting expedited removal of U.S. citizen Sharon McKnight). Similarly, due to the rushed system of expedited removal, DHS fails to identify immigrants who should not be subject to the process because, for example, they have lived in the United States for many years or they have credible fear of persecution. *See, e.g.*, *American Exile* at 63 (describing erroneous expedited removal of Mexican citizen who had lived in the United States for 14 years); *id.* at 38 (recounting case of a Guatemalan citizen and mother of four U.S. citizen children who was removed under an expedited removal order even though she told the CBP officers that she was afraid to be deported to Guatemala, where her father had been murdered and her mother had been the target of extortion by gangs); *id.* at 39 (describing 22-year-old woman who fled domestic violence removed to El Salvador without being provided a credible fear interview); *United States v. Mejia-Avila*, No. 2:14-CR-0177-WFN-1, 2016 WL 1423845, at *1 (E.D. Wash. Apr. 5, 2016) (dismissing indictment where defendant was not subject to expedited removal because the record was "clear" that he had lived in the United States for more than two years).

These errors are likely to increase under the Rule. Proving two years of continuous physical presence, while detained and alone, will be unfeasible for many people detained under the Rule under the short timeframe provided for expedited removal proceedings. In order to prevent improper deportation of long-time residents or citizens of the United States, including to countries where those individuals have no ties or face persecution or torture, DHS should halt implementation of the Rule.

IV. Expanded expedited removal poses a serious threat to immigrant women and children by circumventing their chance to access asylum and puts families at risk of separation, which has detrimental and long-lasting effects on the wellbeing of children.

As has been elaborated upon, the rights of individuals to pursue asylum claims is intercepted by DHS when they are placed in expedited removal. By legalizing the denial of due process through circumvention of court proceedings, DHS diminishes the opportunity for immigrant families to receive the protections they need in America. Immigrant women and their children who are fleeing persecution, domestic violence, or other dangers in their home-countries are often scared to come forward about their fear. This fear in combination with the limited "screening process" of expedited removal heightens the chance that children and adults alike miss out on the fair opportunity to share their legitimate fear of return, which lends way to wrongful deportation. Furthermore, those immigrants who are erroneously deported – which is documented to have happened several times – are often returned to dangerous places where their lives are at risk.

Under the expanded scope of the new Rule, immigrants living throughout the U.S. are at increased risk of being subjected to expedited removal, including parents of U.S. citizen children. Research has well documented the detrimental effects of separation from a parent due to detention or deportation. Loss of a parent due to immigration enforcement—and even the fear of possible separation—creates trauma and long-term developmental harm for children, particularly young children. *See e.g.,* Human Impact Partners, *Family Unity Family Health: How Family Focused Immigration Will Mean Better Health* (2013); Wendy Cervantes, Rebecca Ullrich, Hannah Matthews, *Our Children's Fear: Immigration Policy Effects on Young Children,* CLASP (2018). Loss of a parent to detention or deportation also harms child wellbeing by creating economic hardship, reduced access to health care and nutrition supports, housing instability, and poor educational outcomes. *See e.g.,* Ajay Chaudry, et. al*., Facing Our Future: Children in the Aftermath of Immigration Enforcement*, Urban Institute, (2010); Heather Koball, et. al., *Health and Social Service Needs of U.S.-Citizen Children with Detained or Deported Parents*, Migration Policy Institute, (2015).

In order to prevent long-lasting damaging effects to children, including U.S. citizen children, DHS should halt implementation of the Rule.

In conclusion, we request that DHS consider these recommendations, halt expansion of expedited removal, and act immediately to address the long-standing problems with implementation of the pre-July 23, 2019 expedited removal system. Please do not hesitate to contact Wendy Cervantes, Director of Immigration and Immigrant Families at CLASP, at wcervantes@clasp.org if you have questions regarding our comments. Thank you for your consideration.