

Department of Homeland Security (DHS) Memorandum Implementing the President's Border Security Executive Order

Five Key Ways the DHS Memorandum Implements the Executive Order (EO)

1. Foreshadows a drastic expansion in the use of expedited removal (Section G);
2. Forces certain migrants to wait in Mexico for their removal proceedings (Section H);
3. Alters protections for “unaccompanied alien children” (UAC) (Section L);
4. Targets families whose children have migrated to the U.S. unaccompanied (Section M);
5. Dramatically increases use of detention (Section A).

What You Should Know about the DHS Memorandum Implementing the President's Border Security EO

- **Expansion of Expedited Removal Will Result in Due Process Violations.** Expedited removal (ER) is a fast track deportation procedure that allows DHS to deport individuals in as little as 24 hours without the chance to appear before an immigration judge or consult with legal counsel. The Obama administration applied ER to those who were 100 miles from the border and apprehended within two weeks of arriving to the U.S. The Memorandum states that the new administration will shortly release a plan for expanded use of ER. It foreshadows an expansion of the use ER for those who have been apprehended within two years of arriving to the U.S., no matter where there are in the country. While exceptions are made for those who assert a credible fear of return, the U.S. Commission on International Religious Freedom recently issued [a report](#) detailing its ongoing concerns with this process. One concern from the report was that officers incorrectly recorded migrants' stated fear of return which limited their ability to access relief. Such situations could increase with the new proposed increase use of ER.

In addition, the expansion of ER has the potential to broadly sweep in individuals who have been here for years but who cannot provide the necessary paperwork or other evidence upon apprehension to prove the required period of continuous presence in the United States. As a result, those who fail to carry enough documentation to satisfy officers could be subject to ER. This type of broad expansion of the ER process is a troubling policy decision as it will likely eviscerate due process for tens of thousands of noncitizens in the U.S., including those with family ties and deep roots in our communities.

- **Vulnerable Migrants, Such as Asylum Seekers, Will Face Many More Obstacles to Accessing Protection.** The Memorandum calls for certain border arrivals to be returned to Mexico and Canada and processed in those countries. Thus, it places women, children, and other vulnerable individuals at risk of immediate violence, trafficking, and other harm in Mexican border regions; it also increases their likelihood of deportation without due process by the Mexican authorities. This policy further makes it very difficult for

vulnerable populations to access social services and legal assistance to prepare their immigration cases. Rather than adopting such an inhumane and unjust policy, we should seek, in the words of Pope Francis, “open accessible and secure humanitarian channels” to those fleeing persecution.

- **Many Children Will Be Stripped of Their UAC Status When Reunified With Parents or Legal Guardians, Putting Children At Risk.** Previously, children were determined to be “unaccompanied” upon apprehension by the Border Patrol, and the UAC status designated by the government would remain with the child for the duration of their immigration proceedings, even if they reunified with family living in the United States. The Memorandum calls DHS to strip UAC of their “unaccompanied” status if they reunite with parents or legal guardians. This new policy departure will deny children critical child protections and have a chilling effect on the willingness of undocumented parents and legal guardians to come forward to care for UAC during their removal proceedings. As a result, this policy will likely lead to increased instances of trafficking and abuse. Additionally, the policy goes against child welfare and family reunification principles. DHS may also choose to separate these children from their families. Such policies would take a significant toll on the mental and emotional health of children, as well as undermine their ability to assert their claims to relief. Pope Francis has noted that, “among migrants, children constitute the most vulnerable group.” Our policies should acknowledge this reality, and unaccompanied children should be viewed as children first.
- **Family Members Who Help Children Seek Safety Will Be Penalized.** The Memorandum directs DHS to “ensure the proper enforcement” of our immigration laws against people who “directly or indirectly” facilitate the smuggling or trafficking of children into the United States, including parents and family members. Such enforcement could include placing individuals into removal proceedings or referring them for criminal prosecution. The Memorandum states that undocumented parents and family members of UAC hire smugglers to bring their children north, and by doing so “conspire to violate our immigration laws.” This sentiment ignores the reality these families face by failing to recognize the dangerous and violent country conditions that drive children to flee and reunify with family in the United States. This policy will likely not deter families who see aiding their child’s journey as the only way they can protect them from violence or death.
- **Massive Increases in Detention Will Bring High Financial and Human Costs.** The Memorandum calls for detention of nearly all undocumented who are apprehended by DHS. DHS has not detained every individual it apprehends due to extreme cost and an understanding that certain vulnerable groups, who are not community safety or flight risks, should not be detained. Already, DHS’s Congressional bed mandate of 34,000 detention beds costs taxpayers more than \$2 billion each year. The increase in detention set forth in the Executive Order and the Memorandum could lead to over 200,000 people being detained daily; DHS has neither the capacity nor the budget to do so. Furthermore, the expansion of detention will erode the rights and wellbeing of thousands of people, including the disabled, children, elderly, torture survivors, or pregnant women, which the Memorandum explicitly does not exempt from detention.