

The Biden Administration Has Suspended A Trump-Era Policy That Put Immigrants At Risk Of Being Deported Without Due Process

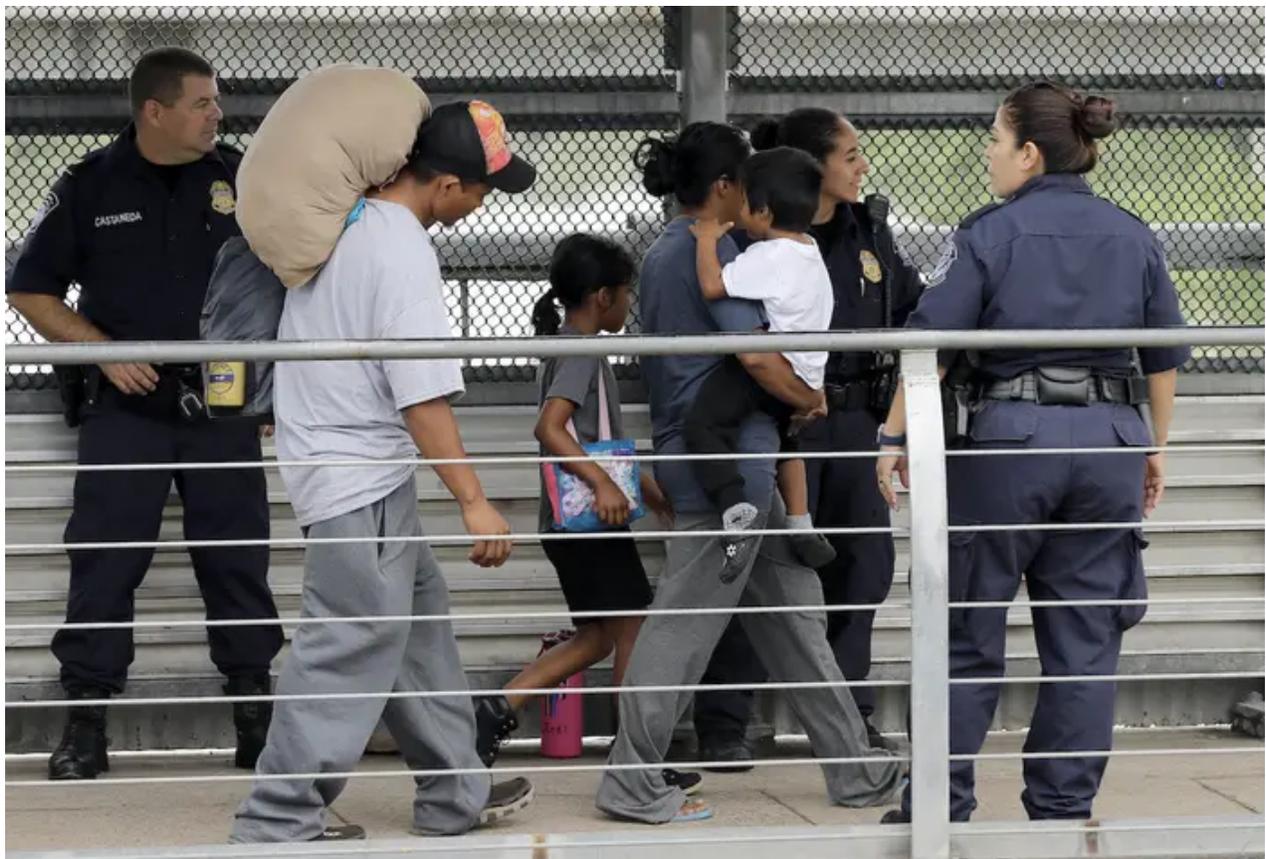
The decision comes after BuzzFeed News inquired about data detailing how the little-known policy was used for several immigrants this year.



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Immigrants from Honduras are escorted back across the border in Hidalgo, Texas.

David J. Phillip / AP

A Trump-era policy that allows ICE officers to arrest and rapidly deport certain undocumented immigrants without access to a judge was suspended by the Biden administration Thursday after BuzzFeed News obtained government data that showed it had been used several times this year.

“DHS’s review of expanded expedited removal is ongoing. This particular application of expedited removal was used in an exceedingly small number of cases under the Biden Administration and will not be used moving forward until the Department’s review is completed,” a DHS spokesperson said in a statement.

From Jan. 20 to late August, ICE officials said they have deported four immigrants under the policy, including one person who was not in possession of a valid visa in the Dallas area and another who had entered the country through Texas in late June without authorization. Prior to Jan. 20, 17 immigrants had been deported since the implementation of the so-called expanded expedited removal policy last October.

The data given to BuzzFeed News by ICE appears to be the first public acknowledgment by government officials on the use and scope of the policy.

“The administration is right to direct that expanded expedited removal not be used while review is ongoing. [Department of Homeland Security Secretary Alejandro] Mayorkas should now move swiftly to rescind this Trump era policy,” said Anand Balakrishnan, an ACLU attorney who led a lawsuit over the policy.

The controversial effort, which was initially instituted in 2019 by the Trump administration and faced an immediate legal challenge that

delayed its deployment, allows ICE officers to arrest and deport undocumented immigrants without a hearing in front of an immigration judge. The policy was blocked by a federal judge in 2019 before an appellate court lifted the preliminary injunction last year. ICE officials later issued guidance to its officers last October on how to use it.

At the time of its implementation, the effort was seen as a way the Trump administration could increase deportations while circumventing a court system that is severely backed up and short on resources. Advocates for immigrants have said it would destroy their due process rights and questioned the use of “expedited removal” away from the border, where it had been previously used. Within the US, ICE officers typically arrest immigrants and place them into deportation proceedings. These include a hearing before an immigration judge — a process that can take years.

Since last year, questions about the scale and scope of the expansion of expedited removal have gone unanswered.

The data provided to BuzzFeed News also comes months after President Joe Biden ordered Mayorkas in February to review the policy and decide whether to modify, revoke, or rescind it. It was expected that the Biden administration would move to undo the policy.

“The review shall consider our legal and humanitarian obligations, constitutional principles of due process and other applicable law, enforcement resources, the public interest, and any other factors consistent with this order that the Secretary deems appropriate,” Biden wrote.

“Expedited removal” is most commonly used within 100 miles of the border and for those who have been in the country for up to two weeks. Border officials long used expedited removal near the border, regardless of administrations. The changes made by Trump officials,

however, were unprecedented. In July 2019, Trump expanded the policy so that expedited removal could be used anywhere in the country and for anyone who could not prove that they had lived in the US for longer than two years.

Experts have noted that the vast majority of unauthorized immigrants have lived in the US for 10 years or more, but said such a policy would instill fear within immigrant communities. What's more, while ICE officials told officers and prosecutors last year that immigrants could use bankbooks, leases, school records, employment records, or other materials to prove the length of their presence in the country, advocates have explained that such information could be difficult to quickly round up, especially if the person is in detention.

Marielena Hincapié, executive director of the National Immigration Law Center, said any continued use of the expanded expedited removal policy would directly contradict Biden's promise to revamp the immigration system.

"This policy promotes racial profiling and eviscerates due process by allowing immigration officers to rapidly deport people – including those with meaningful ties here – without ever appearing before an immigration judge," Hincapié said in a statement. "Like the administration's recent decision to label people seeking safety and a better life at our borders as security threats in their new enforcement guidelines, this is yet another example of how the Biden administration continues to rely on destructive immigration policies and a failed deterrence-based strategy."

In a 2019 lawsuit, the ACLU and the American Immigration Council challenged the expansion of expedited removal, noting that the policy allows for officers to deport immigrants soon after they are arrested without a chance to speak to their attorneys or gather evidence. The new process was a "major departure" from a century-long norm of allowing noncitizens in the United States with "notice, access to

counsel, an opportunity to prepare, and a contested hearing when they face removal.”

Since its creation two decades ago, the lawsuit notes, expedited removal was only authorized in limited circumstances, specifically for those arrested near the border shortly after arrival into the US. The group argued that the experience with expedited removal at the border should dissuade the courts to allow its use throughout the country, specifically finding that the government had wrongly deported individuals, including US citizens, through the process.

“The unprecedented expansion means that low-level DHS officers can now immediately subject hundreds of thousands of additional individuals to expedited removal, without any consideration of their family ties — including ties to U.S. citizen or lawful permanent resident family members — or their strong ties to their communities,” the group wrote in its initial complaint.

TOPICS IN THIS ARTICLE

Immigration



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