

# United States Senate

WASHINGTON, DC 20510

July 11, 2025

The Honorable Kristi Noem  
Secretary of Homeland Security  
U.S. Department of Homeland Security  
245 Murray Lane, SW  
Washington, DC 20528

The Honorable Pam Bondi  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Mr. Todd Lyons  
Acting Director  
U.S. Immigration and Customs Enforcement  
500 12<sup>th</sup> St., SW  
Washington, DC 20536

Dear Secretary Noem, Attorney General Bondi, and Acting Director Lyons:

We are extremely concerned by reports of a recent initiative to arrest and detain noncitizens at their immigration court hearings, and in many cases, dismiss their immigration cases without advance notice and while hiding the government's intent to arrest them.<sup>1</sup> Some reports indicated that plain-clothed Immigration and Customs Enforcement (ICE) personnel stationed outside of immigration courtrooms had lists of cases marked for dismissal and even photos of the individuals they intended to arrest.<sup>2</sup> Upon the granting of this request by an immigration judge, ICE officers have reportedly arrested individuals or families outside the courtrooms and placed them in a fast-track removal process known as expedited removal (ER).<sup>3</sup> These actions prevent noncitizens from having their fair day in court and raise serious legal and due process concerns. They also make clear that this Administration is not targeting the worst criminals and threats to public safety, instead redirecting staff and resources away from drug trafficking and human trafficking and towards these operations targeting noncriminal immigrants who are following the law and showing up for their day in court.

ER historically has applied only to a noncitizen who "is arriving in the United States" and certain other noncitizens apprehended close to the border less than 14 days after arrival in the United States.<sup>4</sup> Individuals subject to ER are mandatorily detained<sup>5</sup> and can be summarily deported

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<sup>1</sup> See e.g. Malaver Milena, Grethel Aguila, Jacqueline Charles and Syra Ortiz Blanes, *ICE Agents in Miami Find New Spot to Carry out Arrests: Immigration Court*, Miami Herald, (originally published May 21, 2025, updated May 26, 2025), <https://www.miamiherald.com/news/local/immigration/article306900486.html>; Ingram, Paul, "Mayhem" as ICE Officials Arrest Multiple People at Immigration Court in Phoenix, AZ Mirror, May 21, 2025, <https://azmirror.com/2025/05/21/mayhem-as-ice-officials-arrest-multiple-people-at-immigration-court-in-phoenix/>; Aleaziz, Hamed, Luis Ferre-Sadurni and Miriam Jordan, *How ICE is seeking to ramp up deportations through courthouse arrests*, NY Times (May 30, 2025, updated June 1, 2025), <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>.

<sup>2</sup> See e.g. Rahman, Billal, *DHS Responds to Reports of Children Zip-Tied by ICE Agents*, Newsweek (June 2, 2025), <https://www.newsweek.com/dhs-children-zip-tied-ice-agents-2079893>.

<sup>3</sup> Supra note 1.

without a hearing before a judge, administrative appeal or federal court review,<sup>6</sup> unlike regular removal proceedings. The ER process offers very limited administrative review<sup>7</sup> and no meaningful opportunity for a noncitizen to challenge whether they can legally be placed in ER. There is no real opportunity to provide documentation, for example, that would demonstrate they have continuously resided in the United States for more than two years, or that they were, in fact, admitted or paroled into the United States and therefore not subject to ER.<sup>8</sup> ICE is now expanding the application of ER to noncitizens in the interior of the United States<sup>9</sup> who have developed significant ties to the United States, including by lawfully working and attending school.<sup>10</sup> Arresting law-abiding individuals and placing them in ER deprives them of the opportunity to have their fair day in court with the due process protections in immigration court proceedings.

Nevertheless, we understand that ICE attorneys have been instructed to look for immigration court cases that can be dismissed<sup>11</sup> and then orally request, without prior notice, that removal proceedings be dismissed or the Notice to Appear be withdrawn.<sup>12</sup> ICE often did not inform immigration judges or the noncitizens that the purpose of their request was not relief from removal, but instead that ICE intended to arrest and place the individual in fast-track removal without a hearing.<sup>13</sup> It has been a longstanding practice to dismiss cases that are not a priority for enforcement or that ICE chooses not to prosecute, allowing noncitizens to instead pursue immigration applications affirmatively through U.S. Citizenship and Immigration Services (USCIS).<sup>14</sup> Here, however, many noncitizens were not notified that their cases were being

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<sup>4</sup> American Immigration Council, *Expedited Removal Explainer*, (Feb. 20, 2025), <https://www.americanimmigrationcouncil.org/research/expedited-removal>.

<sup>5</sup> INA sec. 235(b)(1)(B)(iii)(IV).

<sup>6</sup> INA sec. 235 (b)(1) (A).

<sup>7</sup> There is no administrative review of an ER order, except for very limited review of a noncitizen's claim that they in fact have lawful permanent resident, refugee, or asylum status. INA sec. 235(b)(1)(C).

<sup>8</sup> See INA sec. 235(b)(1). ER also only applies to noncitizens charged under specific grounds of inadmissibility, having engaged in fraud or misrepresentation to procure admission or other immigration benefit, or that they lack the requisite documents for admission and does not apply to noncitizens who are removable for other reasons. INA sec. 235 (b)(1)(A)(i).

<sup>9</sup> 90 F.R. 8139 (Jan. 24, 2025). This expansion of ER is being challenged in court. *Make the Road New York v. Noem*, 25-cv-00190 (D.D.C.), challenges the Secretary's designation of expanded expedited removal throughout the country to certain noncitizens present for less than 2 years. New ICE guidance instructs officers also to expand ER for arriving aliens to encompass all noncitizens paroled at a port of entry at any time and to consider them for placement into ER. See Hessen, Ted and Kristina Cooke, Reuters, *Trump weighs revoking legal status of Ukrainians as US steps up deportations*, (March 6, 2025), <https://www.reuters.com/world/us/trump-plans-revoke-legal-status-ukrainians-who-fled-us-sources-say-2025-03-06/>, including a link to the ICE guidance at [https://fingfx.thomsonreuters.com/gfx/legaldocs/gkpljxxoqpb/ICE\\_email\\_Reuters.pdf](https://fingfx.thomsonreuters.com/gfx/legaldocs/gkpljxxoqpb/ICE_email_Reuters.pdf). This further expansion of ER to encompass noncitizens lawfully paroled at a port of entry at any time, even after two years in the United States, is being challenged in *CHIRLA v. Noem*.

<sup>10</sup> See e.g. Kramer, Marcia, CBS News, *New York City Public High School Student Detained by ICE at Asylum Hearing*, (May 27, 2025), <https://www.cbsnews.com/newyork/news/nyc-high-school-student-immigrant-detained-ice/>.

<sup>11</sup> Supra note 1 (NY Times).

<sup>12</sup> Supra note 1 (Miami Herald). See also Aleaziz, Hamed, Luis Ferre-Sadurni and Miriam Jordan, *How ICE is seeking to ramp up deportations through courthouse arrests*, NY Times (May 30, 2025, updated June 1, 2025), <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>.

<sup>13</sup> Supra note 1.

<sup>14</sup> American Bar Association, Children's Immigration Law Academy, *Termination v. Dismissal in Removal Proceedings* (Apr. 2, 2024), <https://cilacademy.org/2024/04/02/termination-v-dismissal-in-removal-proceedings/>.

dismissed for a different purpose—to place them in ER—and effectively deny them access to a decision from an immigration judge as well as affirmative applications through USCIS.<sup>15</sup> Because noncitizens did not understand the purpose of their dismissal, they did not, through counsel or otherwise, have an opportunity to take steps to oppose the ICE attorneys’ motions to terminate or withdraw.<sup>16</sup>

Immigration judges—who are not part of an independent judiciary but housed under the Executive Office of Immigration Review within the Department of Justice—have also received guidance encouraging immigration judges to grant the ICE attorneys’ motion to dismiss “with no additional documentation or briefing” or opportunity for a noncitizen to respond.<sup>17</sup> In some cases, immigration judges were not made aware of the purpose of the dismissal. As a result, immigration judges could not take into account in their dismissal determination that the noncitizen will immediately be placed in ER.<sup>18</sup> In some cases, the immigration judge did not give noncitizens adequate time to respond to ICE motions to dismiss, or ensure those appearing *pro se* were informed of the consequences of their cases being dismissed.<sup>19</sup> And in some cases, the immigration judge dismissed the case over the strong objections from the noncitizen who wished for their immigration case to continue with the court.<sup>20</sup>

Noncitizens whose removal proceedings are abruptly dismissed in this manner lose the ability to request relief in immigration court for which they are otherwise eligible, such as asylum or adjustment of status to lawful permanent resident, or to request that an immigration judge hold their case while they pursue an immigration status with USCIS, such as classification as a Special Immigrant Juvenile. Many of these noncitizens who had their cases dismissed had reportedly already submitted an asylum application or other forms of relief to the immigration court, raising serious concerns that their applications were wrongfully denied any consideration. For example, a Mexican transgender woman with no criminal history who came to the United States in 2023 after being subject to abduction and rape by members of the Knights Templar drug cartel in Mexico, had applied for asylum; upon her appearance for her court hearing in Portland, Oregon, ICE moved to dismiss her case, the court granted the request, and she was subsequently

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<sup>15</sup> See e.g., Bustillo, Ximena, NPR, *ICE’s novel strategy allows for more arrests from inside immigration courts*, (June 12, 2025), <https://www.npr.org/2025/06/12/nx-s1-5409403/trump-immigration-courts-arrests>.

<sup>16</sup> Id. See also *supra* note 1.

<sup>17</sup> Based on Department of Justice Guidance Reviewed by Staff of Ranking Member Durbin of the Senate Judiciary Committee. See also Bustillo, Ximena, NPR, *ICE’s novel strategy allows for more arrests from inside immigration courts*, (June 12, 2025), <https://www.npr.org/2025/06/12/nx-s1-5409403/trump-immigration-courts-arrests>. This new guidance also conflicts with the relevant regulations, namely 8 CFR sec. 1003.23 and 8 CFR sec. 239.2, governing pre-decision motions and cancellation of notices to appear, respectively, as well as with Chapter 3.1 of the Immigration court practice manual. See American Immigration Lawyers Association, *Practice Alert: EOIR Guidance to Immigration Judges on Dismissals and Other Adjudications*, (June 12, 2025), AILA Doc. No. 25061204.

<sup>18</sup> See e.g. Malaver Milena, Grethel Aguila, Jacqueline Charles and Syra Ortiz Blanes, *ICE Agents in Miami Find New Spot to Carry out Arrests: Immigration Court*, Miami Herald, (originally published May 21, 2025, updated May 26, 2025), <https://www.miamiherald.com/news/local/immigration/article306900486.html>.

<sup>19</sup> American Immigration Lawyers Association, *Policy Brief: ICE Arrests at Immigration Courts*, (May 30, 2025), <https://www.aila.org/library/policy-brief-ice-arrests-at-immigration-courts>. In some cases, even when the immigration judge did not immediately grant the motion to dismiss and did give the respondent additional time to respond, ICE detained the noncitizen anyway. Aleaziz, Hamed, Luis Ferre-Sadurni and Miriam Jordan, *How ICE is seeking to ramp up deportations through courthouse arrests*, NY Times (May 30, 2025, updated June 1, 2025), <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>.

<sup>20</sup> Arizona case reported to Sen. Kelly office.

arrested by ICE agents in the lobby.<sup>21</sup> In another case, ICE requested the dismissal of a case of a Cuban man who entered the United States in 2021 and had an asylum application pending; an immigration judge in the Miami Immigration Court told the asylum seeker he could seek asylum affirmatively from USCIS after the dismissal; instead, ICE arrested and detained him.<sup>22</sup>

The U.S. Supreme Court recently stated, “[w]e have long held that no person shall be removed from the United States without opportunity, at some time, to be heard. Due process requires notice that is reasonably calculated, under all the circumstances, to apprise interested parties and that affords[s] a reasonable time ...to make an appearance.”<sup>23</sup> Here, it appears that the ICE attorneys are being told to dismiss immigration cases and place noncitizens in expedited removal. At the same time, immigration judges are being told that they may dismiss such cases without any briefing or opportunity to respond. In addition, often noncitizens have not been notified of the purpose of their dismissal, in order to respond or contest the dismissal of their immigration cases, or the placement of their case into expedited removal. Taken together, these actions raise serious due process concerns.

These actions also place noncitizens in an impossible position. If noncitizens who fear arrest do not attend their immigration court hearing, they may receive an *in absentia* removal order that will newly subject them to swift detention and removal. If they do attend, they risk arrest, detention, and a swift deportation, possibly to South Sudan, Libya, or El Salvador—countries they may have no connection to.<sup>24</sup> This manipulation of existing laws to enact this Administration’s mass deportation agenda is creating chaos in our immigration system while doing nothing to make our communities safer.

We request responses to the following questions by July 25, 2025:

1. What specific guidance has DHS or DOJ/EOIR issued regarding the dismissal of standard 240 removal proceedings and the facilitation of enforcement actions in and around immigration courtrooms? Please provide a copy of the relevant guidance, email, memorandum, or other directives associated with this policy.
2. How many individuals have been detained and placed in ER following dismissal of their cases from January 20<sup>th</sup> to May 19<sup>th</sup>, 2025? How many have been detained and placed in ER following dismissal since May 20, 2025? Provide the total number of individuals arrested and detained by week, and disaggregate by country of origin, gender, and age.

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<sup>21</sup> Mesh, Aaron, *Lawyers say ICE Arrested Woman Seeking Asylum After her Portland Court Hearing*, Willamette Week, (June 2, 2025), <https://www.wweek.com/news/courts/2025/06/02/attorneys-say-ice-arrested-woman-seeking-asylum-after-her-portland-court-hearing/>.

<sup>22</sup> Supra note 1 (Miami Herald).

<sup>23</sup> *A. A. R. P. v Trump*, 145 S. Ct. 1364, 1367 (2025)(internal citations and quotations omitted).

<sup>24</sup> Gabbatt, Adam, *The Guardian*, *Group stranded with ICE in Djibouti shipping container after removal from U.S.*, (June 6, 2025), <https://www.theguardian.com/us-news/2025/jun/06/migrants-djibouti-ice#:~:text=A%20group%20of%20men%20removed,stopped%20by%20an%20American%20court>

- a. What number of the total individuals detained and placed in ER following the dismissal of their removal proceedings have been referred for a credible fear interview (CFI)? How many have passed that interview with the asylum officer and how many did not? Of the total negative CFIs by an asylum officer, how many were reviewed by an Immigration Judge and reversed?
  - b. Of the total individuals detained and placed in ER following dismissal of their cases, how many had applications pending with the immigration court in INA 240 proceedings at the time that the ICE attorney moved for dismissal? How many had applications pending with USCIS (e.g. adjustment of status, SIJ classification, T or U visa)? Of those with applications pending in immigration court, how many were asylum applications and how many were for adjustment of status to lawful permanent resident?
  - c. Of those individuals who had asylum applications pending in immigration court when the ICE attorney requested the dismissal of proceedings, how many were subsequently given a CFI after dismissal and their placement in ER? Of those, how many passed that interview with the Asylum Officer and were placed back into proceedings to again pursue their asylum claim? Of those with an asylum application pending who were subsequently given a CFI after dismissal and their placement in ER, how many had a negative CFI with an asylum officer which was subsequently reversed by an IJ and were placed back into proceedings?
  - d. What number of the total individuals detained and placed in ER following the dismissal of their removal proceedings have been placed back into INA 240 proceedings for any reason?
3. Are immigration judges being monitored or tracked on how they respond to ICE motions to dismiss the cases or to withdraw the NTA? If so, how is that information being utilized?
  4. There are reports of cases where the immigration judge did not immediately grant ICE's motion to dismiss and did give the noncitizen additional time to respond, but ICE detained the noncitizen anyway.<sup>25</sup>
    - a) Since May 20<sup>th</sup>, in how many cases has an ICE attorney orally requested a dismissal, and the IJ has either denied such a motion or granted additional time for the noncitizen to respond?
    - b) In how many of those cases did ICE arrest and detain the noncitizen despite the removal proceedings not being dismissed?
    - c) In how many of those cases did ICE request a Change of Venue to a detained docket?
    - d) For the subset of cases moved to the detained docket, in how many cases has ICE moved to dismiss again before a different immigration judge in order to place the noncitizen in ER?

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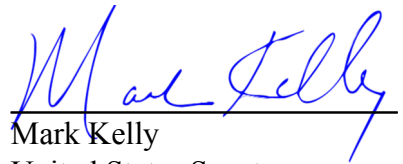
<sup>25</sup> Supra note 1 (NY Times).

5. Of the total detained and placed in ER after the dismissal of their court cases, how many had a criminal conviction?
6. Of the total detained and placed in ER after dismissal of their court cases, how many were continuously present in the United States for more than two years? Provide an explanation of the legal basis for their placement in ER.
7. Of the total detained and placed in ER after dismissal of their court cases, how many were in removal proceedings after having been initially paroled into the United States at a port of entry? Provide the total number and disaggregate by country of origin, gender and age. Also, provide the total number of individuals who were initially paroled more than two years prior to the issuance of the I-860 ER order.
8. Provide a complete list of all the immigration courts where ICE courthouse arrests and placements into ER have occurred since May 20, 2025. At each of these immigration courts, disaggregated by each individual court, have *in absentia* removal orders increased and if so, by what percentage of the total scheduled court hearings? Provide a daily accounting of the number of *in absentia* removal orders issued in each immigration court since January 1, 2025, disaggregated by court.

Sincerely,



Richard J. Durbin  
United States Senator



Mark Kelly  
United States Senator



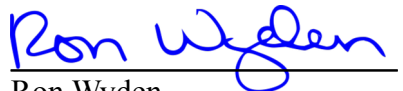
Alex Padilla  
United States Senator



Tammy Duckworth  
United States Senator

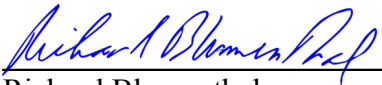


Chris Van Hollen  
United States Senator



Ron Wyden  
United States Senator





Richard Blumenthal  
United States Senator



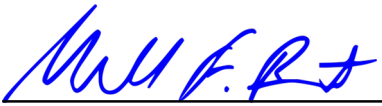
Adam B. Schiff  
United States Senator



Catherine Cortez Masto  
United States Senator




Mazie K. Hirono  
United States Senator



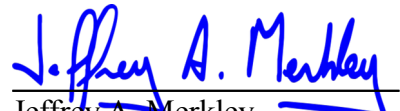
Michael F. Bennet  
United States Senator



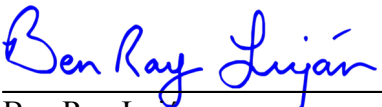
Christopher A. Coons  
United States Senator



Jacky Rosen  
United States Senator



Jeffrey A. Merkley  
United States Senator



Ben Ray Lujan  
United States Senator



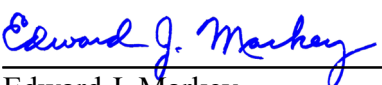
Andy Kim  
United States Senator



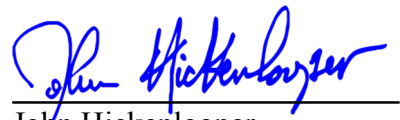
Martin Heinrich  
United States Senator



Tina Smith  
United States Senator



Edward J. Markey  
United States Senator



John Hickenlooper  
United States Senator



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Angela Alsobrooks  
United States Senator



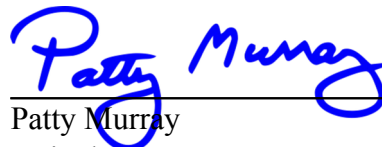
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Ruben Gallego  
United States Senator



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Elizabeth Warren  
United States Senator



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Patty Murray  
United States Senator