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## DHS Vastly Expands Expedited Deportation Authority

By **Nicole Narea**

Law360 (July 22, 2019, 6:07 PM EDT) -- The Trump administration is expanding its authority to initiate expedited removal proceedings against noncitizens who have been living in the U.S. for up to two years and deport them without an immigration court hearing, according to a Monday announcement.

The Department of Homeland Security said that, starting Tuesday, it is instituting a new rule under which unauthorized noncitizens across the entire U.S. — not just those apprehended within 100 air miles of a land border — who arrived in the last two years via a land border could be subject to expedited removal proceedings.

“The effect of that change will be to enhance national security and public safety — while reducing government costs — by facilitating prompt immigration determinations,” DHS said, estimating that more than 20,000 immigrants a year may be subject to the new rule.

Previously, the government could initiate expedited removal proceedings against noncitizens who had been apprehended by immigration officials within 100 air miles of a land border and had been in the U.S. for no more than 14 days. Those who had arrived by sea and satisfied other conditions could also be subject to expedited removal if they had been in the U.S. for no more than two years.

To justify the sudden change, Acting DHS Secretary Kevin McAleenan invoked his authority under the Immigration and Nationality Act to have “sole and unreviewable discretion” to alter the scope of expedited removal proceedings. The rule is therefore exempt from the Administrative Procedure Act’s requirement to give the public an opportunity to comment on it before it goes into effect, DHS said.

The announcement drew criticism from immigrant advocates who warned that anyone who fails to carry evidence of their legal status in public could be deported immediately without speaking to a lawyer or a judge, and without the right to appeal.

Omar Jadwat, director of the Immigrants’ Rights Project of the American Civil Liberties Union, said in a statement Monday that the organization will soon challenge the rule in court.

“Under this unlawful plan, immigrants who have lived here for years would be deported with less due process than people get in traffic court,” he said. “We will sue to end this policy quickly.”

Stephen Yale-Loehr, a professor at Cornell Law School, said that, under immigration laws, the government can only initiate expedited removal proceedings after assessing an

individual's eligibility to enter the U.S. Immigration officials must interview apprehended individuals to determine whether they have credible fear of persecution in their home country as required for an asylum claim, whether they actually had authorization to enter the U.S. and whether they are a U.S. citizen.

Yale-Loehr said that those interviews, however, might not be reliable going forward.

"Given the administration's attacks on asylum and the credible fear process, some immigrants may be expeditiously removed in violation of their due process rights," Yale-Loehr said. "Some U.S. citizens may also be erroneously expeditiously removed because they can't prove their citizenship to the satisfaction of an immigration agent."

Public comments on the rule will be accepted for 60 days after its Tuesday publication in the Federal Register.

A representative for DHS did not immediately respond to requests for comment on Monday.

--Editing by Emily Kokoll.

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