

## Too Fast for Fairness: “Expedited Removal” and the Family Expedited Removal Management Program

Asylum adjudications are complex and the stakes are life-and-death, yet far too often fairness is sacrificed for speed. [Expedited removal](#) is a form of processing created in 1996 that allows the U.S. government to quickly and summarily deport people arriving at the United States without ever presenting their case to an immigration judge. Under current law, any person can be put in expedited removal if they are within 100 miles of the border and within 14 days of their arrival to the United States. Congress included a preliminary screening interview for anyone who expresses a fear of return to protect against refugees from being deported without presenting their full asylum claims. See Expedited Removal Flowchart [here](#).

Expedited removal has been [repeatedly shown](#) to have inherent [due process obstacles](#) that are often impossible to overcome. Combined with [Biden's asylum ban](#), expedited removal [stacks the odds](#) against people seeking asylum and makes their return to danger (in violation of U.S. and international law) commonplace. **Nonetheless, the Biden administration has [increased its reliance](#) on expedited removal along with other [punitive measures](#) with the aim of [deterrence](#). Now, the White House and Senate negotiators are [considering](#) a dramatic expansion of the use of expedited removal** by expanding a Biden administration program known as the Family Expedited Removal Management (FERM) program. This existing program combines expedited removal with alarming, mandatory uses of surveillance; it's no surprise that [fewer than three percent](#) of those in the program are able to obtain legal representation.

*National expansion of expedited removal programming will mean that thousands of people arriving at the southern border seeking safety in the United States would be forced to wear an ankle monitor and rushed through asylum proceedings – with little or no access to counsel — in a matter of days or weeks, only to be deported back to danger. This is not a fair or humane system, but rather a means to quickly deport families or individuals who could be facing life or death circumstances. Rapid deportations from inside the United States will skyrocket because people never had the opportunity to fully understand or present their asylum claim.*

This explainer:

- Describes what the Family Expedited Removal Program is;
- Describes how FERM undermines basic due process and asylum rights, including: no meaningful access to counsel; rushed timelines making it impossible for people to prepare and present their claims; particular harm to Indigenous families; and the blanket application of ankle monitors to people seeking asylum, destabilizing families' mental health;
- Describes how expansion of the FERM program would work; and
- Describes alternative solutions the Biden administration should be considering instead of expanding expedited removal.

## What is the Family Expedited Removal Management (FERM) program?

The FERM program – [first announced](#) by Immigration and Customs Enforcement (ICE) in May 2023 – places parents and children apprehended at the U.S. border into a dramatically expedited asylum screening process while the family is kept under heavy surveillance. Borrowing from the carceral and criminal probation system, ICE requires one parent to wear an ankle monitor and remain confined in their home at night — a “home curfew” that effectively amounts to house arrest despite the fact that these families are in civil asylum processing. The FERM program is now operational in 45 cities nationally.

Expedited removal sets families up to fail. In FERM, families have as little as one day upon their arrival at their destination city to undergo a pivotal adjudication: their credible fear interview, which is the threshold screening to determine whether they are eligible to apply for asylum. If they fail this interview, they have just one week to seek review by an immigration judge. If they fail there, they are required to report to an ICE office for deportation, usually within a week. All told, a family often has only 20 to 30 days from their arrival to their deportation. During this same time period, they are also attempting to meet their family’s basic needs upon arriving in a new country including shelter, housing, clothing, food, and urgent medical and mental health care, often without any systematic support during that short time. Under these conditions, the vast majority of families cannot find an attorney despite the high stakes they face.

Expedited removal typically forces asylum seekers to undergo their screenings in a carceral setting, usually in Immigration and Customs Enforcement (ICE) detention. With FERM, the Biden administration borrows from other aspects of the criminal legal system by subjecting individuals to ankle shackles and house arrests. FERM is also a due process nightmare, given the program’s impossible deadlines and rapid deportation scheme.

Those families who beat the odds and pass their credible fear interview or court review are transitioned out of the FERM program, put in immigration court proceedings and often subjected to another form of surveillance involving a [cell phone app](#). Those who fail are deported and barred from attempting to return for five years. Most families will face a lifetime bar on asylum access if they return to seek protection in the United States again, leaving them with lesser protections based on torture or persecution that also require higher burdens of proof.

## How does FERM undermine basic due process and asylum rights?

[People in FERM have no meaningful access to counsel.](#)

Currently, **fewer than 3% of people in FERM have legal representation**. FERM’s timelines and procedures are so rushed that no legal service provider nationally — [including NIJC](#) — has been able to develop a service model that ensures direct representation for people in FERM. Although some asylum seekers in FERM are able to access a [brief orientation](#) — this is a far cry from direct representation, which is what is needed to help people navigate the often byzantine U.S. asylum laws especially in such a short time frame. The American Immigration Lawyers Association found in a [recent analysis](#) that fast-tracked timelines directly result in lower representation rates for people seeking asylum. FERM is unsustainable for legal service providers and private attorneys, who have to suspend other casework to engage in the rapid response the FERM program requires in every case.

*FERM’s rushed timelines make it impossible for people to prepare and present their asylum claim.*

U.S. asylum law is infamously complex, and many families understandably have little or no ability to explain the

exact legal basis, or facts most relevant to, their U.S. asylum claims without speaking at length with an attorney. NIJC's legal experts estimate that it takes approximately 100 hours to provide representation for a full asylum adjudication, including complex legal research, fact gathering, and numerous in-person meetings with the client for trauma-informed interviews and case preparation. Consultations with clients frequently take twice as long when an interpreter is needed, and interpreters may be harder to secure for Indigenous languages. As a result, the few families with attorneys are racing against FERM's deportation clock merely to work with their counsel, let alone to present their full claims.

### *FERM harms Indigenous families.*

In cases where NIJC has represented Indigenous families in the FERM program, we have observed the government regularly refusing to provide interpretation in the family's Indigenous languages during their interviews. This has resulted in multiple wrongful negative findings, as parents struggle to present their fear in a language in which they are not competent.

*The blanket application of ankle monitors and surveillance to people seeking asylum destabilizes people's mental health and makes it harder to navigate the legal system.*

Families placed in the FERM program have reported experiencing distinct harms as a result of the ankle monitor and home curfew requirements. [One NIJC client](#) reported bursting into tears when, in front of her 11-year-old child, she was forced to wear a GPS ankle monitor. Another client reported living in fear that she would be immediately deported if she left her home, due to her ankle monitor combined with her home curfew.

The FERM program has a [devastating impact](#) on traumatized families and children, regardless of whether they ultimately pass their credible fear screenings. Infants, toddlers, and young children are routinely placed in the program with their parents and placed at risk of summary deportation without due process protections. Parents who could not make childcare arrangements on the accelerated FERM timeline are routinely forced to testify about severe trauma while their young children were present. According to [Americans for Immigrant Justice](#), credible fear records are replete with instances of parents, babies, and children crying; young children questioned by asylum officers; and parents having to comfort their children or informing the officers that a child is hungry or needs a diaper change.

These responses are not surprising: requiring people who just survived life-threatening violence and trauma and Customs and Border Protection (CBP) detention to cope with [more surveillance](#) and restriction is punitive and cruel. It is also completely out of step with established best practices for case management and support services people actually need to find stability and navigate their immigration case. Asylum seekers are less likely to fully disclose the harm they suffered when they are in such restrictive conditions because of the extent of the trauma they have endured.

## **How would expansion of expedited removal work?**

The Biden administration and Senate negotiators are discussing expanding expedited removal so that larger numbers of arriving asylum seekers — including adults and families — would be surveilled, placed in home curfew or house arrest, and put through expedited removal upon arrival at their destination city anywhere in the United States. The dramatic expansion in the use of a FERM-like program will make it nearly impossible for anyone to find counsel. In rare cases where people find counsel, asylum attorneys would be pulled to drop nearly all other representation to prevent the summary deportation of individuals. As NIJC asylum attorney Stephanie Spiro observed in representing people in expedited removal and FERM, it amounts to "[deporting](#)

[people asylum seekers so fast they can't get attorneys or justice.](#)" Spreading this model across the nation will inevitably rip apart families and communities.

## What alternative solutions should the Biden administration be considering instead of expanding expedited removal?

[Study after study](#) has proven that punitive measures such as ankle monitors and curfews are harmful and unnecessary to ensure that people appear for and engage with their court proceedings. In contrast, [legal representation](#) and [community-based support services](#) are proven to support nearly 100% appearance rates. Rushed deportations risk erasing entire families' right to exist free of persecution or torture. **Ensuring robust resourcing of the U.S. immigration system, including funding for processing at the border, for full asylum adjudications as opposed to diverting resources to expedited removal screenings, reception throughout the United States, and for increased efficiencies that [increase fairness](#) rather than trade away due process, is essential.**

"I was very nervous when we had our credible fear interview, which was almost two hours long. It was very difficult to explain myself because the officer kept telling me I had to answer questions with only yes or no answers. I wish we had an attorney with us, but I didn't have time to find an attorney because my interview date was so quick. I was able to speak to a couple of lawyers, but they said my interview was so soon, they could not help me." — *Mother subject to FERM, now represented by NIJC*

"I was very scared throughout this process. I was so scared the officer or judge might not understand what I was trying to explain and they would order my daughter and me deported. I was terrified that we might be deported any day to face the violence and death threats we fled from." — *Mother subject to FERM, now represented by NIJC*

<https://immigrantjustice.org/research-items/too-fast-fairness-expedited-removal-and-family-expedited-removal-management-program>